THE INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES

In the Matter of Arbitration Between:	
HONDURAS PRÓSPERA INC., ST. JOHN'S BAY DEVELOPMENT COMPANY LLC, PRÓSPERA ARBITRATION CENTER LLC,	
Claimants,	ICSID Case No. ARB/23/2
and	
THE REPUBLIC OF HONDURAS,	
Respondent.	Volume 1

VIDEOCONFERENCE: HEARING ON PRELIMINARY OBJECTIONS

Monday, December 16, 2024

The Hearing in the above-entitled matter came on at 8:00 a.m. (EDT) before:

PROF. JUAN FERNÁNDEZ-ARMESTO
President of the Tribunal

MR. DAVID W. RIVKIN
Co-Arbitrator

MR. RAÚL E. VINUESA
Co-Arbitrator

ALSO PRESENT:

MR. MARCO TULIO MONTAÑÉS-RUMAYOR
Secretary to the Tribunal

MR. FEDERICO SALON-KAJGANICH
Paralegal

MR. ANTONIO GORDILLO
Assistant to the Tribunal

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Associate at Armesto & Asociados

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C O N T E N T S

P R O C E E D I N G S

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Good morning. Good afternoon. On behalf of the Tribunal of my colleagues, Mr. Rivkin and Prof. Vinuesa and myself, I thank you for being here with us in this Hearing on Preliminary Objections in the case ICSID Arbitration 23/2, Honduras Próspera Inc., St. John's Bay Development Company LLC, and Próspera Arbitration Center LLC against the Republic of Honduras.

I will start in English because that is the language chosen by the Claimant. I will finalize in Spanish because that is the language of the Republic of Honduras, and I will address each Party in its preferred language. So I will address Claimants in English and the Republic of Honduras in Spanish.

On behalf of -- I also welcome our Secretariat, Dr. Montañés-Rumayor; our Assistant, Mr. Gordillo.

And now let me just double-check with Claimants. Do we have the whole -- I see Ms. Santens, Mr. Jijón, and Ms. McDonnell. Is the Claimants' team

complete?

MS. SANTENS: Yes, we are, Mr. President. And good morning, good afternoon, to everyone.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Excellent. Now, let me go to the Respondent, the Republic of Honduras. Good morning to all. I see Mr. Gil. Mr. Gil, I'm not sure who is going to take the lead.

MR. FIGUEROA: For the purposes of this Hearing, I will introduce the team and also handle Procedural matters as necessary without prejudice to the participation of my colleagues.

PRESIDENT FERNÁNDEZ-ARMESTO: Of course. And it will be Mr. Figueroa?

MR. FIGUEROA: Yes.

PRESIDENT FERNÁNDEZ-ARMESTO: Yes, we already know one another.

Very well, Mr. Figueroa, I give you the floor.

MR. FIGUEROA: We are all here.

PRESIDENT FERNÁNDEZ-ARMESTO: Excellent.

And we also have with us the Non-Disputing

Parties, and we have the U.S. Department of State, the Office of the Legal Advisor, and that should be Mr. Bigge, Kuritzky, and Marcovitz. And hopefully they are -- yes, I see you there. Good morning, sir.

MR. BIGGE: Good morning. That is correct, Mr. President, thank you.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you very much.

And we also have the Office in Charge of Dispute Settlements from the Dominican Republic with Abreu, Rodríguez, and Mercedes. I hope that you are here.

MS. ABREU: Good morning. We are, Mr. President. Thank you very much.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you very much for being here.

And from the Ministry of Economy of Guatemala, we have a team headed up by Ms. Meza, Godínez, Medina, and several others. We also welcome you.

MS. MEZA: Thank you very much. Thank you very much, Professor.

PRESIDENT FERNÁNDEZ-ARMESTO: Excellent. Thank you very much for being here.

We have the Spanish Court Reporter, Dante Rinaldi, who must be somewhere; and our English Court Reporter, Ms. Dawn Larson; and, finally we have our Interpreters, and thank you to Court Reporters and Interpreters for their important task. We have Ms. Colla, Mr. Roberts, and Mr. Arango.

That is the interpretation team and finally last, but not least, we have Mr. Abbott from Sparq, Inc. as for the technical subject.

Very good. So let me start with a couple of preliminary matters. The first one is the scope of our Hearing today so that everyone is aware.

This is the Hearing in the Preliminary Phase, and it is limited to Respondent's Preliminary Objection under Article 10.20.5 of the CAFTA, and Respondent requested -- and now I quote -- "that the Tribunal accept in all its parts the Preliminary Objection of nonexhaustion of local remedies to which the Republic of Honduras conditioned its consent to ICSID Arbitration declaring, in consequence, that it

lacks jurisdiction."

So this is the question which we have to address. And we will do that, as you know, and we agreed in the pre-hearing conference call, we will have 1 hour 30 minutes for each Party with a break, then we will have a slightly longer break. There will be some Tribunal's questions, and, finally, there will be a short wrap-up by the Parties.

Let me also say here on behalf of the ICSID Secretariat that, in accordance with the CAFTA, there are certain arrangements to provide public access to the Hearing and to protect information designated as protected information from disclosure.

So, first of all, that there doesn't seem to be any protected information, or there has not been any designation by the Parties. So hopefully this whole discussion of protected information will be moot. What will happen is that an audio-video recording of the Hearing will be made available on the ICSID website in both English and Spanish.

So at this moment public access does not exist but it will exist because the video will be made

available, and if there is any protected information, I would kindly -- if during the course of the Hearing any protected information comes up, I would kindly ask the Parties to immediately raise their hand, say something, speak up immediately, and we will then go through the procedure which has been described in our Procedural Order.

Finally, there is -- there are some, let me -- that is really everything which I would like to start at the beginning. At the end of -- the audience will have to speak about the next steps and the Procedural calendar.

So assuming -- I look first to my Secretary, Marco Tulio -- Dr. Montañés-Rumayor, is there anything else we should tell the Parties in this housekeeping portion?

SECRETARY MONTAÑÉS-RUMAYOR: Thank you, Mr. President.

Just a reminder to the Parties to share their PowerPoints or any exhibits or any demonstrative with the Interpreters and Court Reporters too by email, at least, I believe, 30 minutes prior to its

use. Thank you.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank you. Yes.

MS. SANTENS: Mr. President, if I could jump on that comment, actually, the Respondent was supposed to send its PowerPoint to us by 8:00 a.m. It is now 8:13 and we still have not received it. So if they could please email it immediately to us and to you, and the -- everybody who is supposed to receive it. Thank you very much.

MR. FIGUEROA: I was about to indicate that unfortunately the PowerPoint is quite heavy. We have been trying to upload it to Box for some time now, and it isn't happening. We have also tried to send it by email, and that isn't working either because it is too heavy. We are here coordinating with technical people to try to be able to send it in one way or another. I don't know if there is anyone at ICSID who we could speak with to help us resolve this matter.

MS. SANTENS: Is it being sent as a PDF, may I ask? It may be because it is being sent in PowerPoint, which is heavier.

(Comments off microphone.)

SECRETARY MONTAÑÉS-RUMAYOR: That is a good idea, to compress in a PDF and then upload it to Box, if need be, would be the best option.

MR. FIGUEROA: Okay. We are going to do that. We are going to do that straightaway.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good.

So with that, if there is no further point from the Secretariat, is there any further point from my esteemed colleagues, from Prof. Vinuesa or Mr. Rivkin?

ARBITRATOR VINUESA: No, from this side, no.

PRESIDENT FERNÁNDEZ-ARMESTO: None from Mr. Rivkin. I see him moving his head.

ARBITRATOR RIVKIN: Nothing. Nothing from me as well. Thank you.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. So with that, I think we can now give the floor to Respondent, and I would kindly ask that everyone who is not going to speak either for Respondent or for Claimant, if they can put out their cameras, it makes for a much neater screen, and it facilitates.

Very good. So with that -- can -- is the Republic of Honduras going to be able to -- or could it, is it capable of uploading its PowerPoint to Zoom, to the Zoom platform?

MR. FIGUEROA: I understand that we can project it. It hasn't been uploaded yet, Mr. President, but --

PRESIDENT FERNÁNDEZ-ARMESTO: But if we could see it now because if we can't see it on the screen, then it is going to be complicated.

MR. FIGUEROA: Yes, we will put it up just in -- right now.

PRESIDENT FERNÁNDEZ-ARMESTO: Excellent. Then we give the floor to the Republic of Honduras and we hope that you will be able to resolve the technical problems.

MR. FIGUEROA: Just a moment.

PRESIDENT FERNÁNDEZ-ARMESTO: Would you like us to take a few minutes' break?

MR. FIGUEROA: That could be the case, we could do that. I'm so sorry.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. We're

going to have a five-minute break to give the Republic of Honduras time to upload its presentation. It is 17 past the hour, so we'll come back at 25 past the hour. Thank you.

(Brief recess.)

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. I think we can resume the Hearing. I see the Secretary, but we seem to have lost the Parties.

MR. FIGUEROA: We are right here, Mr. President.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. I see the Republic of Honduras.

And Claimant?

MS. SANTENS: We are here. We just went off camera because Respondent will go first.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Yeah, but if you can stay -- if something happens, can I kindly ask Counsel to Claimants to remain on screen if you can.

MS. SANTENS: Of course. Yes.

PRESIDENT FERNÁNDEZ-ARMESTO: We have both Parties. Okay. Dr. Montañés-Rumayor, we're okay?

SECRETARY MONTAÑÉS-RUMAYOR: Yes. We are ready.

PRESIDENT FERNÁNDEZ-ARMESTO: Very well. Then with this, we give the floor to the Republic of Honduras.

OPENING STATEMENT BY COUNSEL FOR RESPONDENT

MR. FIGUEROA: Thank you, Mr. President. Just to confirm that the overheads have been uploaded to Box, and thank you all for being here. Good morning once again. Distinguished Members of the Tribunal and distinguished colleagues from the other Party, and good morning to all those who are here as observers.

My name is Kenneth Figueroa, and I'm accompanied by the General Attorney of Honduras Díaz Galeas and the Director for International Affairs, as well as Mr. Nelson Molina, who is an advisor to the Government. I'm also accompanied by Andrés Esteban and Luis Brugal, as well as Co-counsel Rodrigo Gil, Francisco Grob, Mathias Lehmann, Alain Drouilly, and Matías Toselli.

In the course of this morning, on behalf of

the Republic of Honduras, we'll present the Preliminary Objection that has been put forward pursuant to Article 10.20.5 of the DR-CAFTA to protect the -- Honduras's sovereign right in respect of the ICSID Convention.

First of all, I'm going to give the floor to the Attorney General who will address the Tribunal briefly, then Rodrigo Gil will present some background. Third, my colleague, Andrés Esteban will briefly develop the applicable legal standard, the one that applies pursuant to Article 10.20.5 of DR-CAFTA.

Fourth, I will be in charge of explaining to the Tribunal why the objection raised by Honduras is an objection to the Tribunal's jurisdiction. The Tribunal that has been formed under the ICSID Convention and the Claim cannot be considered admissible as claimed by Claimants.

Finally, I'll give the floor to Francisco Grob. He'll explain why Legislative Decree 41-88 is a condition of Honduras's consent under Article 26 of the ICSID Convention that precludes the jurisdiction of this Tribunal.

Without more, I'll give the floor to the Attorney General.

PRESIDENT FERNÁNDEZ-ARMESTO: You have the floor, Attorney General.

MR. DIAZ: Good afternoon, Mr. President, Juan Fernández-Armesto. Good morning, Members of the Tribunal. As the Attorney General of the Republic, it is an honor to lead the defense of the Republic of Honduras in this situation, together with our advisors from Foley Hoag.

Honduras is a State that is open to national and international investment, and in accordance with the figures from the main international organization has had sustained economic growth and has improved its competitiveness indexes in the Region. Now it is a developing, peaceful and institutionalized nation. Xiomara Castro, the President of the nation, has attained that goal by regaining the rule of law and also by implementing the Constitution of the Republic.

Honduras withdrew from ICSID in February this year, and that Decision was not taken lightly. The main two factors that led us to make this Decision

were represented in the arbitration initiated by the Companies that in Honduras we know as Próspera and ZEDE. First this Arbitration initiated by Claimants was a Machiavellic strategy to push the people to this situation.

This case, Members of the Tribunal, goes beyond an alleged investment. It is the survival of the Honduras population and also Honduras as a sovereign nation. Próspera has initiated this Arbitration based on mischaracterizations and also by going against the respectful attitude of all of the organizations in Honduras, also in spite of all of the expressions of Hondurans against the ZEDE Project.

Honduras has always followed the institutional path. We have not resorted to force or implemented arbitrary Measures to counteract the accusations of the Claimant and the shocking arguments of Claimants and their representatives.

Honduras has followed and observed the law. On April 20, 2022, the National Congress in the Parliamentary session abrogated the ZEDE regulation in an unanimous vote by each of the 128 representatives.

On November 20th, this year, the Supreme Court of Justice issued a Decision that was logic given the institutional fraud that was promoted by the ZEDE representative.

The Court reinstated the constitutional supremacy by declaring the unconstitutional nature of the ZEDE system and also respecting the sovereignty and the freedom of our people.

Mr. President, Members of the Tribunal, we should all agree that the State that has -- that is sovereign and that has consolidated after wars in the area has the right to make this decision and, given that prerogative, we think that this is an offense by the Próspera ZEDE to debate the sovereignty and existence of the State in an international arbitration.

Secondly, it shouldn't be surprising that the same reasons that took Honduras and other countries to withdraw from ICSID are the same ones that led us to denounce the Convention at the beginning of this year. Honduras felt that their consent was being threatened. Members of the

Tribunal, as you all know, and in spite of these ICSID Convention that was implemented in 1966, it was only in the '80s when several countries in Latin America became Parties to this ICSID. In 1984, the Secretary-General of ICSID was promoting the advantages of ICSID for Latin America and also addressing the questions and concerns that people may have in São Paulo, Brazil. As part of his presentation, the Secretary-General indicated that the Latin America countries could always request the exhaustion of domestic remedies at the time of signing the Convention in accordance with Article 26, as we did.

Four years after this conference, the Republic of Honduras signed and ratified the ICSID Convention with a declaration that any Claimant would first have to exhaust the administrative or judicial local remedies before resorting to ICSID. This is stated under Article 26 of the Convention, but the promise that we heard 40 years ago from the Secretary-General of ICSID and also the refutable contents of Article 26 are threatened in this

Arbitration. Honduras conditioned their acceptance of ICSID jurisdiction under Decree 41-88. Therefore, it is unfortunate that Claimants are not recognizing this.

On behalf of Honduras, I trust that this Arbitration and the Arbitral Tribunal will go against the expectations of Honduras when we acted and withdrew from the Convention.

Now I give the floor to Mr. Gil.

PRESIDENT FERNÁNDEZ-ARMESTO: I thank you, Mr. Attorney General. And now we give the floor to Mr. Gil.

MR. GIL: I thank you, Mr. President. I am going to refer to some critical aspects, as we heard already from our Attorney General, and the Claimants have not complied with the condition to exhaust domestic remedies.

The document is quite clear when we read that the investor should first exhaust local remedies in Honduras prior to submitting their dispute settlement mechanisms under the Convention. Additionally, the Claimants clearly did not exhaust

local remedies, but their own Pleadings they have clearly stated that they did not attempt to exhaust local remedies, therefore, this is a fact already recognized by them that they did not comply with this condition, with this prior condition.

Next, I will explain why the actual situation shows that Claimants did not exhaust domestic remedies, and this is not because of the reasons that they indicate in their Pleadings when they referred to the domestic or Administrative Courts in Honduras, rather, because Claimants have always known from the very first day about the unconstitutional nature of the ZEDE regime when they decided to step into the Honduras territory. So this is an investment made knowing that this was not in accordance with Honduras's legal regime but also, as we have seen throughout the regulatory changes in the Republic, we have clearly seen that it is not admissible to have the ZEDE regime and also in any civilized country this would not be allowed.

Why? What is the regime that the Claimants have tried to implement in the Republic of Honduras?

First, the Claimants attempt, Próspera attempts to have a portion of the territory of the Republic on an autonomous basis by controlling its territory without allowing the free entry of the Honduran people. They have also attempted to have their own legislation, and they have declared what they call the "common law right" of the Roatán Island. This means that the Civil Code of the Republic of Honduras is not to be implemented in the island. That is, the Code, the Labor Code, the Commerce Code, and all of the legislation that has been passed under the sovereign right of Honduras, that cannot prevail in Honduras. Beyond that, they also state that they have their own judicial system, the ownership, so any dispute there should be decided by means of the Próspera -- before the Próspera Arbitration Center, that means that also criminal issues or the Criminal Code does not apply in that area and it cannot be heard by the Honduras legal system. So this goes against any common sense. They also state that they are to hire private police forces, and this is a private militia.

What does it mean? And there have been

several issues. The civil guards of Próspera do not allow the access to police officers from Honduras. They also say that they need to have their own monetary force, their own monetary policy and use crypto currency and they do not allow the use of the Honduras currency. They want to have total tax, administrative, and regulatory autonomy without any oversight or any sort of control in connection with what happens in the territory.

And, finally, they attempt to have their own public policies in terms of education, health. What is the meaning of this? What does this imply? That the Próspera ZEDE Project is a regulatory area that is completely separate from any State control. That is the Próspera Project. Clearly the existence of this type of project goes against the basic rule of law principles and also the western conception and also civilized view, but it also leads to a problem in terms of international liability issues because we are Parties to international treaties that also bind us throughout the territory. Therefore, the Republic of Honduras is also bound to comply with the universal

declaration of human rights, also the international compact on economic, social, and cultural rights, or the Convention on the rights of children.

And, finally, we also need to protect the territory against the illicit trafficking of drugs, and this is very important because the Roatán Island is part of the Bay Islands, and this is also the typical route to take drugs to the North America, to the U.S. And also, we have the UN Convention against organized crime to avoid money laundering. We are Parties to that, but none of this will be implemented because we are -- the Republic of Honduras is not allowed to oversee what is going on in that area. Our hands are tied. We cannot go into the territory. We cannot oversee this, but, at the same time, -- and this is completely unfair -- we are also open to any international sanctions because Próspera is not a country. Próspera is not under public law, but it is under their own regulations.

Finally, the human rights office has also issued a Decision on this asking Honduras to review the compatible nature of the constitutional framework

in connection of ZEDE and their international commitments also in observance of human rights.

Members of the Tribunal, the United Nations has addressed this issue, the issue of the Regulatory Framework, but, at the same time, there is an absolute consensus within the country, not only of all of the institutions in Honduras but also the civil society and also all of the business sector in Honduras. It is unacceptable to have legal assistance in the Próspera ZEDE territory. Even the Honduras Council for Private Companies that gathers all of the private companies in Honduras has also made similar statements in saying that the ZEDE should not be a new state within the country. We have heard the same thing from the association of -- from lawyers and the various associations.

So the risks that concern Honduras have started to come true. We have also started to see some testing that is not authorized and that is taking place in Próspera. And also, there have been some other actions that have not had any Environmental Authorization, and there have been some disputes with

the Garifuna communities and also the Afro-descendants in that area. So this clearly, as we have heard, goes against international law and domestic law.

Now, the legal framework of the ZEDE, Members of the Tribunal, is unconstitutional ab initio, and we need to be very specific. The Claimants have always known that what they tried to do in Honduras cannot be done in Honduras or in any other country.

Now, let us look at this. The ZEDE, again, were created in a dark period of the history of Honduras. There was a period in which there was a Government, an administration led by Mr. Lobo and Mr. Hernández who was leading the representatives in the country. So that was an administration that was linked to drug trafficking, and we call it as the "drug dictatorship," the one led by Mr. Lobo and Hernández. Mr. Hernández was associated or in collusion with Sinoloa, so much so that this was recognized by the Department of Justice that confirmed the payment from Sinoloa to Professor -- to the President Hernández. And the same happened not only

with Sinoloa but also with the Cachiros. So all of this implied that, in 2022, the former President Hernández was extradited to the United States and is currently in prison for 540 months in the U.S. This is under a U.S. proceeding. And, to be clear, Mr. Hernández was arrested while he was in Tegucigalpa, and if he had been arrested in the Próspera area, Honduras could not have arrested that gentleman. So this is what we are discussing in this Arbitration.

Now, the Lobo-Hernández team, this administration that was heavily linked to drug trafficking and implemented this regime. And this is a very brief timeline. On August 11, 2011, these two members of the administration presented and approved, in Congress, under the control of drug trafficking leaders, the ZEDE that was known as RED back then. So in the law, approving the ZEDE dates back to August 11, 2011. That bill was declared unconstitutional by the Supreme Court in October 2012, and it is obvious if any person has any legal knowledge, we can see it, this is detrimental to the

territorial integrity by giving RED part of our natural territory, and also granting the territorial autonomy given the various administrative, judicial, and financial areas. So there were some -- and clearly here there were some unconstitutional issues that needed to be addressed. So what was the -- what did they do?

So they removed the Justices of the Supreme Court, the ones approving this Decision. What did they do? So they avoided Congress. They bypassed Congress. They bypassed Congress and the justices of the Supreme Court were removed, those who had declared the unconstitutional nature of the ZEDE.

Then, the Administration appointed new justices, and on January 24, the new bill was approved, and the Supreme Court of Justice that was the one appointed, but this Administration declared the unconstitutional nature. So this is the legal framework, Members of the Tribunal, based on which we are presenting this Arbitration and this alleged investment by the Claimants.

So the international system works, the

Inter-American Court on Human Rights issued a Decision against the Administration in Honduras because of the illegal removal of the justices of the Supreme Court. And what has been the reaction of Honduras under the new Administration? This was clearly stated by the Attorney General, the institutional path.

I apologize, but here we do not have any images of Armed Forces entering the Republic, but the Minister was appointed so that Fernando García so that he could follow the institutional path to see how we could address this issue. There were some unconstitutional challenges presented and clearly it was also followed by the civil society and the National Congress in Honduras, as we heard from the Attorney General also abrogated the juridical framework of the ZEDE.

So all of the representatives, from the left, from the right, from all of the parties, this was something that was addressed unanimously by all of the representatives in the country beyond their political parties.

When we read the Claim, it is quite specific

and we can look at Paragraph 64 of the Request for Arbitration. They are referring to some very specific Measures and they are objecting the conduct of the Government in the area of customs and trade issues, all in connection with the ex post system, and also, they also require, for example, the registration of people in Próspera and the various transactions. So this, once again, in connection with the exhaustion of domestic remedies, the question to ask is, let us look at those specific issues in that specific point of time as presented by Claimant.

And what are the remedies that we have at hand? We have the Administrative Proceedings Law. We have -- there is the possibility to present e challenges, and also if there is an adverse or decision, there is the judicial, also, option for them. Now, the clear question is why?

Why Honduras presented this Request for Arbitration for this amount of damages? We all know that this case is about $11 billion, and the answer is very clear and simple: The Request for Arbitration presented by Claimants is a threat, it's a threat

instead of deciding on exhausting domestic remedies because they knew that what they were doing was unconstitutional. They decided to initiate the ICSID Arbitration only as a way to coerce and threaten the Republic of Honduras if they continued with their institutional process to undermine the ZEDE.

I invite the Members of the Tribunal to look at Paragraph 11 and Paragraph 83 of the Request for Arbitration after 83. Only if Honduras dares to continue by resorting the Constitution undermining the ZEDE, beware that because here we are going to have the threat of $11 billion. That is the threat. That is coercion.

Very well. The 11-billion figure clearly is striking to anyone. And we can imagine, we can think of what Próspera is -- were thinking of Próspera's land. It is quite the contrary. The situation within Próspera is one building, a 20-floor building and a cottage that has a bitcoin cashier system. That is the Próspera infrastructure. And they also present themselves as if they had hundreds of residents and hundreds of companies operating there. Quite the

contrary. The Próspera Project has no residents. It only has virtual residents, and it has no operating companies, rather, these are paper companies. They are registered there and in the Cayman Islands. This is a tax heaven that has been organized in a regulatory haven, and this is an extreme model of what we know as a capitalist system, and we cannot accept this.

So what happened after this Request for Arbitration? It is quite simple, and after this Request for Arbitration, the institutions continued to -- the un constitutional nature continued to be declared. The Supreme Court of Justice decided that the ZEDE's system was unconstitutional not based on what the Minister had presented, rather, because of another request presented by the Autonomous University of Honduras that was quite concerned for the freedom of -- the freedom to teach in Honduras. And that was the reason why this was declared unconstitutional.

And I apologize, but we cannot be surprised when we hear that the system, the regime was declared unconstitutional, as the Claimants are trying to say

that they are surprised about this. So this is the unconstitutional nature of the first Decision that -- in 2012, but they still decided to continue with this Project.

So the international community has also recognized, and this is -- that this is an abusive arbitration. There was a letter from several members of the -- from several representatives of the U.S. that asked for an analysis of the situation, and I am going to read the characterization of these representatives from the U.S. in connection with the Request for Arbitration presented by Próspera.

(Overlapping interpretation and speakers.)

And we read in English -- "ISDS arbitration under CAFTA-DR to bully the Honduras Government into allowing them to continue operating under the abolished ZEDE framework."

This is a bullying attitude. These are not our words, but these are the words of the members of the Congress of the U.S. This is an unacceptable threat for $11 billion that shows that we do not respect the rule of law in Honduras.

The abuse of the ICSID system is what the Attorney General also said, that this pushed Honduras to denounce the Convention and to withdraw from the system.

Now, Mr. President, Members of the Tribunal, we all know that the investment arbitration is in crisis right now, as we have heard from academics and also the various States. We all know that the investment system is prone to abuse, and I should be very clear and categorical, this is a pragmatic case of abuse and also misuse of the system to exert pressure on a State. The case that you have before you today is a case that is in the hands of the Tribunal to change the system or to continue with the system as we have it.

Now I give the floor to my colleague who will be referring to the standard to be applied under CAFTA.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you very much, and we give the floor to Dr. Esteban.

MR. ESTEBAN: Thank you, Mr. Chairman.

As Dr. Figueroa said, I will refer to the

standards applicable for the analysis of a Preliminary Objection under Article 10.20.5 of DR-CAFTA. It is untenable that the Republic present it within the 45 days following the Constitution of the Tribunal. A Preliminary Objection and this objection raised by Honduras is an objection stating that the controversy is not under the competency of the Tribunal and the procedure on the merits is suspended.

As you know, compared with an objection of lack of juridical merits under Article 41(5) of the Arbitration Rules of ICSID, this objection does not require the Tribunal to determine that the Claims are not juridically valid.

Under Article 10.20.5, the Tribunal must determine if the objection is within the competence sphere of the Tribunal.

However, a main issue is still controversial between the Claimant and the Respondent, and this is if the Tribunal must take us through the factual allegations of the Claimants. Even though it is recognized that Honduras imposed a condition and it was decided not to fulfill it, the Claimants insist

that the Tribunal add to Article 10.20.5 requirements that have not been seen before in order to take their allegations as truth. This strategy must be rejected, Members of the Tribunal.

The Claimants try to tie the hands of the Tribunal to avoid a jurisdictional discussion and to take as valid the validity of legal instruments that were -- have not been proven as attributable to Honduras, such as the Stability Agreement. This position is not right for three reasons, at least.

First, Article 10.20.5 does not have a textual requirement of taking as true the allegations of the Claimants, and it is not equal to Article 10.20.4.

Second, different sentences under DR-CAFTA and other similar treaties support the differences between the two articles, and the other Parties of DR-CAFTA share the position expressed by Honduras in this Arbitration.

Firstly, Article 10.20.5 of DR-CAFTA, which you see at the right side of the screen, is, by its own nature, architecture and design, totally different

from Article 10.20.4, which you can see on the left of your screen, and it says that it can present objections when -- within 45 days of the constitution of the Tribunal.

Article 10.20.5 provides for a fast solution in this case, and it adds another Preliminary Objection described as any other objection in the sense that the controversy is not under the competence of the Tribunal. Therefore, there are two categories of rejections that can be submitted to the expedited procedure of Article 10.20.5.

First of all, objections in which the Tribunal cannot have a favorable solution and objections to the competence of the Tribunal.

Compared to objections under Article 10.20.4, which in (c) indicates that it should take us through some allegations by the Claimant in the case of the objections to the competence of the Tribunal under Article 10.20.5, the Tribunal does not have to assume as true the factual allegations by the Claimants in the Request for Arbitration.

Secondly, in the context of DR-CAFTA, we can

see several Decisions, prior Decisions, which are in agreement with the position of the Republic. In Daniel Kappes v. Guatemala, the Tribunal establishes that, compared to the objections under Article 10.20.4, Objections to Jurisdiction do not require that the Tribunal take as true all the allegations presented. And you can see that in other Decisions such as Renco v. Peru which have the same conclusion. And also, the other Parties of DR-CAFTA share this position, and in spite of all the positions of the other Parties of the Treaty that are in this Hearing, you can see on the screen a position by the United States as a noncontending party in identical context of Article 10.20.4 and 10.20.5. As the United States says: "There is no requirement that a tribunal assume to be true Claimant's factual allegations."

So the Tribunal is not obliged to take these allegations as true in order to determine that this demand is not within its sphere of competence.

I thank you for your attention and I give the floor Mr. Figueroa.

PRESIDENT FERNÁNDEZ-ARMESTO: Mr. Figueroa,

you have the floor.

MR. FIGUEROA: Thank you, Mr. President.

Members of the Tribunal, now we go to the next issue, which we consider fundamental under the present discussion. I will now explain why a Preliminary Objection by Honduras is an objection to the jurisdiction of the Tribunal under the ICSID Convention and not an objection to the admissibility of the Claim.

As you have observed, the Claimants did not refer in their initial pleading to the reasons which condition the consent under Article 26, which, according to them, is not jurisdictional in nature. Only in their Rejoinder they indicate that Article 26 is not related to jurisdiction. This premise is wrong, and we shall refute it in this Hearing.

The position of Honduras is based on three reasons to explain why Article 6 of the Convention in the objection of Honduras are both jurisdictional in nature:

First, a condition for consent under Article 26 of ICSID is jurisdictional in nature.

And, second, the requirement of the Exhaustion of Domestic Remedies is a jurisdictional requirement and not an admissibility requirement. And there are different decisions by international tribunals support Honduras's position.

I will now explain the nature of the jurisdiction -- the jurisdictional nature of the conditions imposed under Article 26. We see this Article on the screen, which states that a contracting party can request the exhaustion of administrative or judicial claims as a condition to consent to arbitration under this condition.

In agreement with Article 31 of the Vienna Convention on the rights of the Treaties, a treaty must be interpreted in good faith. So under this premise, I will now explain why the literal and the context of Article 26 allow us to affirm clearly that it is jurisdictional in nature. And also the purpose and the goal to the Article have to do with the imposition of a condition to consent by the State which are additional to those foreseen by the Treaty.

According to the Claimants, Article 26, in

order to say that this does not refer to jurisdiction, this is a simple stratagem by the Claimants. They hide their head as an ostrich would do.

As you know, as we are seeing in the streets, Article 26 is under Chapter 2 of the ICSID Convention. In the ordinary sense of the text, you have an undoubtable affirmation of the jurisdictional nature of Articles 25, 26, and 27. This is also ratified by the purpose of the Convention.

The Claimants insist that Article 26: "The object and purpose of the Article 26 shows that an Exhaustion of Local Remedies (in Spanish)."

But this has no merit. The interpretation of the mandates would be equivalent to disregarding the purpose of Chapter 2 of the ICSID Convention. This includes, for example, that under Article 25 the controversy should be related to an investment. And as we all know the definition of an "investment" for these purposes under ICSID has been set forth in the Salini text.

As we all know, Arbitral Tribunals constituted under ICSID have routinely analyzed if the

Claimant has an investment, not only under the Investment Treaty or the Free Trade Treaty, but if it also fulfills the Salini criteria.

This is because the investment object to the controversy has to fulfill the requirements of the basic Treaty in order to be heard under ICSID, but it should also fulfill the requirements of the ICSID Convention. Also Article 25(2)(a) on nationality applies in this case. In particular, it says that the jurisdiction of ICSID in no case will apply to claims raised by persons with double nationality. This provision applies even when there are Claims submitted by dual nationality persons, even though there might be a dominant nationality.

That is to say, that Chapter 2 of the ICSID Convention excludes Claims permitted by the Treaty invoked by the investor. So investors with double nationality normally go to other jurisdictions, such as UNCITRAL, to avoid limitations to jurisdiction under ICSID. So we see that Tribunals have always evaluated the ICSID Convention as the instrument for consent when analyzing jurisdiction.

In the case of the ICSID Convention, it is normal that Tribunals should verify if the conditions of Article 25 of the Convention are fulfilled. The consent granted by the base Treaty, in this case DR-CAFTA, is not enough to establish jurisdiction under an ICSID Tribunal.

Both instruments must be complied with. This is why Article 26 works in the same vein as Article 25. That is to say, if a State decides to invoke the last sentence of Article 26, as Honduras has done in this case, and it requests the prior exhaustion of administrative and judicial avenues, this conditions the consent of the State to the jurisdiction of ICSID. This consent is also valid when this condition is fulfilled. So it is definitely a completely jurisdictional issue.

Secondly, we must take into account that the case before the Tribunal today is a sui generis case. As the Attorney General has explained, more than 40 years ago Mr. Ibrahim Shihata, Secretary-General of ICSID, said that there were three possible ICSID conditions to consent for arbitration under this

Convention.

First, as a contractual clause between State and a foreign investor; second, as a condition in a bilateral treaty and among States; and third, a declaration by a State when signing or ratifying the ICSID Convention.

In this case, Honduras opted for the third option and included a condition or consent -- included this as a condition for consent to ratify the Convention. So this is the case of the double Cerradura that we see here. If one of them does not function, it will not be able to open the door.

This is stated in the Tribunal in the case of Phoenix Action under the Czech Republic. And the first key has to do with the fulfillment of the ICSID Convention as -- and also the International Treaty in this case.

The second key is linked to the conditions to submit a claim under DR-CAFTA Article 10.16 and the conditions and limitations to its consent, Article 10.18. So we should all agree in this Hearing that the Claimants cannot open the door to the

jurisdiction in this Tribunal if they do not have the adequate keys to open each and every one of these locks. In this case, the Claimants do not have the adequate key to open the Convention lock, and they do not have an adequate key to open the lock under DR-CAFTA.

Compared to the objection under the presentation of a claim which include the requirement of Exhaustion of Internal Remedies, in this case the condition is imposed under the arbitration -- ordinary arbitration under ICSID. That is to say, that in this case, the Claimants recognized that they have not fulfilled this condition.

Thirdly, the practice of international tribunals is consistent when it shows that the requirement of the Exhaustion of Domestic Remedies in this case is a jurisdictional requirement that must be fulfilled by Arbitral Tribunals before they are declared to be competent.

We see this Decision in Wintershall v. Argentina which said that the requirement is a jurisdictional requirement. In

ICS v. Argentina, Tribunal said that the nonrespected precondition of consent by the Claimant can only lead us to the conclusion that the Tribunal has no jurisdiction in this case. This criteria was also applied to cases such as Ömer Dede v. Romania, Sehil v. Turkmenistan, and Maffezini v. The Kingdom of Spain.

Also the cases quoted by the Claimants to support their position that the exhaustion of resources is an issue of admissibility is not relevant here, and it confuses the Tribunal.

Let's look at the Biwater Gauff v. Tanzania Case quoted by the Claimants. The criteria was whether the local requirements should be fulfilled and if that was a question of admissibility.

As we can see on the screen, the Bilateral Treaty between the United Kingdom and Tanzania had this requirement as part a generic article referring to ICSID. Only the first paragraph talks about consent. And it's only the third paragraph that reference is made to going to national Tribunals for a period of six months as a requirement to submit their

claim, which includes the consent of the investor for the arbitration in a written form.

In this context, it is possible to conclude that this is an admissibility requirement, but this is completely different from our case where the Convention refers to conditions of consent required to access the jurisdiction of the present Tribunal. The rest of the cases quoted by the Claimant, which are on the screen, are not applicable either and they have the same conclusion.

I am not going to go through each and every case, but the Tribunal can see that they have the same pattern. The requirement in discussion is not included as an express condition to consent to the jurisdiction of ICSID, but it is only contained in generic clauses on the presentation of Claims which were made in interpretation in the sense that it was an admissibility question. And this is not the case here.

So compared to what the Claimants state, the exhaustion of domestic remedies is not, per se, a question of admissibility or jurisdiction. This can

only be determined by analyzing the context of this requirement and through a good faith interpretation of the Treaties contained. In this case, the exhaustion of domestic remedies has been required as a condition to consent from Honduras to ICSID and this is under Chapter 2 of ICSID. In this sense, we can only conclude that it is a jurisdictional requirement.

So the condition to consent by Honduras to arbitration under ICSID is jurisdictional in nature and if the Claimants have not fulfilled this, consent to arbitration under ICSID cannot be stated and the Tribunal is not competent to analyze this claim.

PRESIDENT FERNÁNDEZ-ARMESTO: We now give the floor to Mr. Grob or for the concluding remarks.

MR. GROB: Thank you, Mr. President, Members of the Tribunal.

In the next portion, and as you can see on the screen, I would like to focus my intervention on four fundamental points that the Parties have discussed in their written presentations and which confirm that this Tribunal does not have jurisdiction to analyze this case because the Republic of Honduras

condition their consent to ICSID Arbitration to the exhaustion of domestic remedies. And this was not fulfilled by the Claimants when they presented their claim for arbitration.

Article 26 of ICSID Convention allows -- expressly states to fulfill the internal remedies as a condition to consent. Honduras exerted its right under the Legislative Decree 41-88, with which it approved the ICSID Convention. Honduras has not waived its condition, and there is no possibility of reaching a different conclusion. The implication of this condition by Honduras does not imply any contradictory action and it is not contrary to good faith.

The argument submitted by the Claimants in their writings does not contradict this Jurisdictional Objection, and, therefore, the objection by Honduras must be accepted.

Let's look at the first chapter. The Convention gives the Contracting States the right to condition their consent to the exhaustion of domestic remedies. We can see this in Article 26 which

indicates that the exhaustion of administrative or judicial avenues must -- can be conditioned to their consent to arbitrate under this Convention.

This is a power that each Contracting State has to preserve the traditional rule of exhaustion of internal remedies. And this is to avoid being taken to an international tribunal before their own tribunals can decide regarding claims. This has been clear in case law, as you can see on the screen.

Also, the inclusion of this right was key as the Attorney General said to allow Latin American States to accept this Convention. As the ex Secretary General of ICSID, Dr. Ibrahim Shihata states: "When it comes to countries who based their policies vis-à-vis foreign investment on the Tobar Doctrine, the possibility to condition to consent to the exhaustion of domestic remedies was necessary for their addition to the system."

Therefore, knowledgeable of the above, Claimants try by all means to deny the application to a right recognized under Article 26 in this case. They present their series of formal arguments under

majority that would discard the application of this prerogative.

As we can see, the condition or the exhaustion of remedies foreseen by the ICSID Convention is not subject of none of the formalisms that the Claimants try to impose. It is not true, first of all, that the right to require the exhaustion of these resources can only be asserted validly if it is a part of an indivisible instrument in which the State states its consent to arbitration. There is nothing in the text of the Convention that imposed such a restriction.

On the contrary, Article 26 states that this is a unilateral power by the States. They could require, says the standard, without prejudice to the fact that the consent could be granted simultaneously or later on.

This possibility is consistent with the specific practice of the States in the framework of ICSID Convention to consent to investment arbitration. The travaux préparatoires of the Convention reflects the Agreement of the States regarding the need to

construct their consent through internal legislation or unilateral declarations. In this sense the words of the former Secretary of ICSID, Mr. Shihata are very revealing, and can you see that on the screen. Discussing this before Latin America States he stated that the Option under Article 26 to require the exhaustion of local remedies can be made by a declaration by the Contracting States when they sign or ratify a convention.

Second, according to the text of the Convention, the exhaustion or seen under Article 26 can be exerted under the legislation of the receiving State. And this legislation does not have to be contained in a Law for the Promotion and Protection of Investment under CIADI.

In the same order of ideas, the analysis of Secretary Mr. Shihata and Mr. Broches also have ratified the fact that Article 26 have in mind a right by the State which can be incorporated in internal legislation. If we see the second sentence on the State, we can see that Mr. Broches establishes the difference between the domestic legislation imposing

the exhaustion of remedies and other agreements for arbitration.

That is to say, the imposition of this condition by the State is divided from the ratification of future agreements.

And the arbitral case law has also stated the same. We can see the case of Lanco against Argentina where the Tribunal considered that the exhaustion of domestic remedies as a precondition for consent can be made in a bilateral agreement or in the domestic legislation as was done by the Republic in this case.

The case of Lanco referred to the Law of Protection and Promotion of Investment, and is not what the Tribunal says as we can see on the screen, and this restriction is not a part of the Treaty.

This analysis was ratified by the Tribunal of Generation Ukraine against Ukraine, and the Tribunal in that case confirmed the position which now is raised by Honduras because it recognized that has the requirement of exhaustion of internal remedies can be contained in internal domestic legislation provided

that it is valid, which was what was decided in the case of Ukraine.

So Members of the Tribunal, as confirmed by the text and by the case law, the requirements of Article 26 are limited to two requirements: That the State request the exhaustion of administrative or judicial remedies and that it be made as a condition of their consent to arbitration under the Convention.

In the next session, we will see if these requirements are fulfilled in the instant case. As it has been stated, the Republic of Honduras conditioned their consent to the arbitration of CIADI by Legislative Decree 41-88 exerting the prerogative under Article 26 of this Convention. This Legislative Decree is not any instrument. It is the law by which Honduras approved and set in action the ICSID Convention.

It is precisely one of the formulas stated by Dr. Shihata, one of the formulas that the States could use to exert the Option recognized under Article 26 and conditioning their consent to arbitration to the exhaustion of internal remedies.

If we see the text of that Decree, we see that Honduras did that precisely. In the first part of this statement, we see that a general rule established is that --

PRESIDENT FERNÁNDEZ-ARMESTO: Sorry. It was the other slide.

MR. GROB: Thank you very much, President. And sorry.

The first -- as we can see the first part of declaration establishes as a general rule that the State of Honduras shall submit to arbitration and mediation proceedings provided for in the agreement or in the Convention insofar as it is expressed given its consent. And then the Declaration spells out the conditions on which that consent is conditioned. The first of which is precisely that the investor should -- must exhaust the administrative judicial remedies of the Republic of Honduras as a condition prior to implementing the dispute settlement of mechanisms provided for in the Convention.

And in keeping with Decree 41-88, as the legislation that approves the Convention -- well, its

conditions apply to any Arbitration Agreement that refers that institution and includes the Republic of Honduras, whatever the instrument of acceptance has been.

Now, without Decree 41-88 and the condition of exhaustion set forth therein, there would simply be no sent to arbitration nor to a jurisdiction of ICSID as my colleague Mr. Figueroa has clearly explained.

As we will see next, the Claimants seek, unsuccessfully, in their Memorials to refute all of this through a number of arguments which actually are not on point.

First, the Claimants argue that such consent formed by more than one instrument would be, per se, contrary to the rule, the well-settled rule that consent of a State to arbitration must be explicit, clear, and unequivocal, with which, of course, we agree. They invoke, to this end, the case law of investment Tribunals applying Most-Favored Nation clauses such as Daimler, Plama and others.

The truth is, it's difficult to understand how the case law of these ICSID Tribunals refusing to

give investors in those cases where there are jurisdictional conditions set forth in the States, Respondent States, based on supposed Most-Favored Nation -- more favorable treatment set forth in other treaties. That cannot help the Claimants in this case if it is precisely they who ask the Tribunal to ignore one of the jurisdictional conditions to which Honduras subordinated its consent and do so without even invoking any presumed more favored nation -- or more favored treatment by Honduras than some other Treaty.

And that does not exist because the Legislative Decree 41-88 Treaty applies equally to all of them. In other words, they invoke decisions of Tribunals that restrictively interpreted the consent of State in those cases to do just the opposite, and expand improperly the consent given by the Republic of Honduras to submit to ICSID Arbitrations.

It is precisely because the consent of States must be clear and unequivocal as the case law cited as stated. And, one, it cannot be presumed lightly or established lightly in case there is a jurisdictional problem for the Claimants.

Second, the Claimants argue that Legislative Decree 41-88 actually does not include a condition imposed by Honduras but, rather, in the best of cases, it would reflect a mere intention to require such in the future. We see on the screen how the Claimants have turned to expressions without much detail, such as -- and I'll say this in English: "In English."

Therefore, as they add, Honduras seeks, they say, to do so now. Well, this would be contrary to Article 27 of the Vienna Convention on the Law of Treaties which keeps States from invoking their domestic law to excuse failure to perform on their international obligations. And the Claimants' argument is based, as the Tribunal can anticipate, on any number of fallacies and distortions that lead their argument to collapse completely.

First of all, the Claimants' position that Honduran Legislation would be only prospective challenges the theory clear terms of said declaration, which we produce once again on the screen.

Legislative Decree 41-88 does not say that Honduras reserves the right to require exhaustion of

remedies so that Honduras has the intent in the future to require exhaustion of remedies or any other similar formulation.

What Decree 41-88 does, to the contrary, is to expressly require that domestic proceedings be exhausted as a condition sine qua non to -- for accessing international arbitration before ICSID. And it does so in black and white with the most imperative terms possible. Mandating that the investor must exhaust, and I quote, "domestic remedies." This can only mean one thing. The existence of an inexorable imperative.

Second, the Claimants' interpretation is also unacceptable from the standpoint of interpretation because it deprives of any effect the Declaration of Legislative Decree 41-88. Here we see that this goes against a basic, a principle of -- on the interpretation of law and unilateral acts of States under international law. The Claimant recognizes in its Briefs but which they conveniently forget in respect of this institution.

Third, the Claimants also argue that the

last part of Honduras's Declaration confirms that all of its content should be understood as a mere declaration of future intent. In this regard they argue that when that phrase establishes Honduran -- the reference to Honduran law, it should be read as a mere future intent before if interpreted literally it would be at odds with Article 42 of the ICSID Convention which establishes that the Tribunal will apply, among others, the norms of international law that might be applicable.

Nonetheless, this argument doesn't make sense because the Claimant forgets that 41-88 does not, at any point, establish exclusive application of Honduran law. It simply reserves its application as it's not at odds with Article 42 of the Convention. This interpretation is also consistent with the undisputed fact that even in cases under international treaties, domestic law is competent to regulate a number of issues.

And it applies. And also Claimants ignore, as per Articles 15 and 16 of the Honduran Constitution, treaties and international law are part

of Honduran law. Therefore, the assertion in Legislative Decree 41-88 does not by any means mean displacing international law. And, thus, Claimants' argument also fails.

Third, the Claimant suggests that Honduras' declaration was not sufficiently publicized so as to be able to raise it, and the Claimants complain that Honduras's declaration was somehow hidden in the -- at the end of the document. Yet, the Declaration, whether the Declaration is at the beginning or the end, it makes no difference. The point is that it's there for anyone who bothers to read the complete document, of course, as any diligent investor must do. And the law in Honduras, as is normal, is presumed to be known by all.

Second, the Claimants complain that Honduras's declaration under Decree 41-88 was registered as ICSID as a notice in document ICSID 8-F which refers to legislative measures adopted by Contracting States to implement the Convention in their respective territories and not in ICSID Document 8-D, which is a different document, and that it has a

notice similar to those of other states.

Now, this issue, as Claimants themselves end up recognizing, citing Prof. Schreuer, is due simply to the fact that the Convention does not provide for specific notice for Article 26 as it does, for example, for notices relating to Article 25(4). As a result, countries such as Costa Rica, Guatemala, or Israel appear to have adopted it by expressing their intent to require exhaustion and, on occasion, of the notice that they presented under Article 25(a), but it is obvious nothing required that Honduras follow the same path, particularly when it did not make any notice under Article 25(4), as other states did.

Finally, and as a last resort, the Claimants, who cast out on or seek to cast out on the enforceability or relevance of Decree 41-88, they say that it was somehow overcome at some point, that they say that Legislative Decree 266-89 overcame or somehow left 41-88 no longer enforceable. It expressly reproduced the terms of the Honduran declaration and, later, it was repealed by subsequent legislation.

Claimant, however, as illustrated in the

diagram that was up on the screen, confuses things. What happened, and we can see this here, is that the various investment-related laws naturally evolved, some were derogated, some were replaced by others. And down below you see the various Honduran laws. But Legislative Decree 41-88, which is projected up above, always remained in force. Its conditions are applicable to all of those laws. As it is easy for the Tribunal to verify, none of them has stated that they repeal 41-88, and they could have done so had that been the intent.

To the contrary, subsequent laws, such as Decree 45 of the year 2000, made express reference to Legislative Decree 41-88 which reaffirms that it is fully enforce and fully operative. Therefore, it is clear that the Republic of Honduras conditioned its consent to ICSID Arbitration through Legislative Decree 41-88, which is fully in force, as I was saying.

We have come to this point -- or having come to this point, we will now see that Honduras has not waived that condition with respect to this dispute.

There is nothing in DR-CAFTA that would lead to a different conclusion. As Claimants allege in their Memorials and as they will probably do today as well, in particular, there is nothing in DR-CAFTA nor in the supposed Investment Agreement invoked by Claimants that is actually incompatible with exhaustion of domestic remedies and that could be interpreted as a waiver that they seek to extract from it.

As regards DR-CAFTA, on the screen we see the four aspects that the Claimants call incompatible with the Declaration that has been formulated by the Republic of Honduras. As I will explain next, and as I've already indicated, none of these zoomed-in compatibilities is such.

Now, first, contrary to Claimants, DR-CAFTA is a -- it being complex with sophisticated dispute settlement clause doesn't actually keep it from being applicable. DR-CAFTA is concerned about harmonizing the various sources that might come together that would give rise to consent and should make it clear that, if an investor decides to bring a claim to ICSID, it is one of the various options contemplated

in DR-CAFTA, then logically that investor must meet the jurisdictional requirements of the Convention, including Article 26. As my colleague Mr. Figueroa was already explaining, that's the first door into or the first lock that has to be opened in order to get to the next one.

In effect, and as you can see from the slide up on the screen, it is 10.17 of DR-CAFTA that indicates that consent of the Parties must meet the requirements of Chapter 3 of the ICSID Convention of which there are -- only three of those are spelled out in Article 26, and this, in turn, is applicable to the rule on exhaustion of domestic remedies, and those states such as Honduras which, and as appears in LD-41-88, have so required, that in other words, it is impossible for it to be clear.

Second, there is no incompatibility between this decree and the waiver clauses or no U-turn clauses. In the Rejoinder, the Claimants argue that if the investor always had to exhaust domestic remedies, there -- well, then there would be no use in the scheme, the investment resolution scheme. But

DR-CAFTA provides for other forms for arbitration. There could be, for example, UNCITRAL Arbitration. They are not subject to Article -- which would not be subject to Article 26 or Decree 41-88. In such forms there would be no requirement to exhaust remedies. And whatever the Claimant's interpretation, the waiver clause continues to make full sense.

At any rate, and as Honduras stated in detail in its written presentations, waiver clauses have the purpose of avoiding a multiplication of parallel proceedings.

Now, note, they don't avoid just any type of multiplication but, rather, just those that occur when proceedings occur simultaneously, not successively. And this, no doubt, is compatible with the condition of exhausting domestic remedies, because when beginning arbitration, the local proceeding must have been exhausted. Precisely in light of the rule on other requirements of exhaustion, prior exhaustion, and so it is possible to comply with prior exhaustion of remedies and other obligation to not initiate arbitrations where matters are pending.

The compatibility of exhaustion, the exhaustion rule and the waiver clause, has been confirmed by the Arbitral Tribunal, the only case that has ruled directly on this issue, which is the case of Corona Materials v. Dominican Republic. It is notable how the Claimants sought to argue that that award did not address exhaustion of domestic remedies, and I say notable because it suffices to read the outtakes that we have included up on the screen to observe that that was precisely the discussion before that Tribunal.

Now, in this case, at issue was exhaustion of remedies as a prior requirement for a claim, a claim on denial of justice, and so, as here, the Tribunal had to determine whether that exhaustion could be demanded. That's the waiver clause of DR-CAFTA. Now, the response to the Tribunal is that exhaustion can still be required and, indeed, the Treaty provides for options to continue exercising local procedures as necessary.

On this point, the Claimant insists on the case of Metalclad v. Mexico, but this is not an award that actually helps them. In contrast to the

situation here, in Metalclad there was no obligation to exhaust domestic remedies, and therefore, Mexico do not raise it either. One of the differences we see in the diagram up on the screen. But, moreover, the Metalclad case is not even an ICSID Case. It is under the Additional Facility, and so application of Article 26 was not at issue, which is what -- precisely what we are analyzing in this case today. And so it is an entirely irrelevant precedent.

Third, Claimants are also mistaken when they allege that there is some incompatibility between the obligation to exhaust domestic remedies and the fork-in-the-road clauses. This is a point on which several Arbitral Tribunals have ruled, including the case of Corona v. Dominican Republic, which I mentioned just a moment ago. There the Tribunal also analyzed the condition of the need to exhaust prior domestic remedies in light of the fork-in-the-road clause.

And this is also DR-CAFTA case, and you can see it says that the -- both obligations are compatible insofar as the -- in the domestic

proceedings there is no specific allegation of violation of international obligations contained in DR-CAFTA that would be the subject matter of an international case. The two operate on different levels as we've already said and explained.

This has also been recognized by wide-ranging case law emphasizing that in order to establish a fork-in-the-road clause there must be triple identity, which is not going to happen if what is argued before the domestic courts is exhaustion of domestic remedies and what is argued before the international tribunals is the alleged failure to carry out international obligations.

Now, fourth and finally in this section, there is no basis to the argument that exhaustion of the domestic remedies would be incompatible with the prescription provisions of DR-CAFTA.

Article 10.18 of the Treaty establishes that the parties have a three-year period to file a claim, or an alleged violation of the Treaty, but it specifies the moment from which this term is to be counted, and that is the date on which the Claimant

had or should have had knowledge of the violation of the Treaty and the facts that constitute said violation. Therefore, it is clear that cases of prescription under DR-CAFTA only begin to run if it is necessary to exhaust domestic remedies once those initiatives have been taken and once there is a final judgment that finally resolves the dispute.

Now, even if all the foregoing were not sufficient, as Honduras has explained in its Memorials in this case, the prescription provision is not, as Claimants argue, due to the existence of alternative fora.

Now, as regards the Stability Agreement, its relevance is even less in this case. Honduras -- and this was noted in the presentation earlier -- is not a party to this Agreement, and that should be quite clear. Consequently, there is not -- and there could not be a subsequent intent on the part of the Honduran State to set aside a previous requirement for exhaustion of domestic remedies.

The Stability Agreement, indeed, is not an agreement. It is a self-contract, as we've explained

in our Memorials, entered into between Próspera Inc., the Claimants, and one of its agents, the then-Technical Secretary of Próspera ZEDE.

Now, we should be emphatic; the Secretariat has no power to act on behalf of the Honduran State. Quite to the contrary, as you can see up on the screen, the Organic Law of the ZEDEs provides that the Technical Secretary is an executive official at the highest level of the ZEDE and is its legal representative. That's up on the screen.

Even though the Claimants in their Rejoinder reject these arguments, there is no doubt that the facts confirm it. Up on the overhead we can see how the current Technical Secretary has been defending the interests of Próspera ZEDE and that official or employee is of that entity. It would not be -- Claimants cannot refute this close relationship between Próspera and the General Secretariat.

They affirm that the Tribunal should assume that all of the assertions by the Claimants regarding the supposed validity of this Agreement are such, but this is false, as explained by my colleague Andrés

Esteban.

At any rate, it is not correct that Honduras has formulated -- has not made this argument earlier. As the Claimants say, it did so with total clarity from the presentation of the preliminary objection to this Tribunal noting that the Secretary General was not a legitimate, or the Technical Secretary was not a legitimate representative of the Honduran state.

Now, whatever value the Tribunal attributes to this instrument, it is incompatible with the conditions set forth by Honduras in 41-88. In contrast with the -- they say that it's the exclusive remedy, but there is nothing in the documents that it contains such a statement, or such terminology.

Fourth within these chapters, and finally, Honduras's position that there must require in respect for exhaustion of prior -- prior exhaustion of domestic remedies does not mean any bad faith. There are certain acts the Claimant said that made them feel confident that Honduras would not invoke the requirement of prior exhaustion of domestic remedies in 41-88 has no basis.

The Claimants have recognized vis-à-vis the Notices given by Honduras is that it is not that Decree 41-88 was actually repudiated but, rather, they decided to get around it, as they indicate, because, in practice, there was no news of the declaration. That's what they themselves state. That is to say, the Claimants admit or appear to admit that they knew of the existence of Legislative Decree 41-88. Indeed, it's a reference at the ICSID website, but they decided to ignore it in the belief, as they say now, that it did not apply to this case. Who knows why.

But, as the Tribunal notes very well, no one can argue their own lack of knowledge of the law or the lack of expertise to excuse themselves from failing to carry it out. And that can in no way be the basis for legitimate confidence that Honduras would not invoke the condition on which it conditioned its acceptance.

Now, the -- there's a particularly high requirement for -- or threshold for invoking the theory of estoppel. We've cited some examples here. This case, it should be evident that Honduras has not

deployed any relevant effective conduct, vis-à-vis the Claimants, that would allow them to categorically and unambiguously confirm that Honduras has waived the requirement of prior exhaustion of domestic remedies.

And so when the Claimants cite, for example, investment treaties with specific countries, in no case can that lead one to conclude that there's a generalized practice on the part of Honduras along these lines. Indeed, if the Claimants' interpretation of those treaties were correct, the only thing it would show would be a sovereign Decision by Honduras with respect to specific investments for specific disputes.

Finally, and nor does it make any sense, the argument of Claimants doesn't make any sense that -- saying that some confidence had been created by the supposed failure to invoke this objection in other arbitral proceedings. As we all know, each dispute has its own particularities. Having said this, the Claimants have only been able to identify four arbitrations in which the issue of exhaustion of domestic remedies was not raised by Honduras. But

what they failed to mention is that, with one single exception, they were all contractual cases that had particular dispute settlement provisions negotiated by the disputing Parties.

In the others, they did have to exhaust domestic remedies prior to initiating investment arbitration. In all the other cases, including recent cases, Honduras has shown -- and everyone is aware of this -- it has responded to the same objection. In contrast to what the Claimants say, in none of these has the objection been rejected. It was simply dismissed as a Preliminary Objection lacking legal merit, putting off a definitive resolution to forfeit further on.

Finally -- and with this I'm going to close out knowing that Claimants fail to meet the condition of Honduras, they then argue that they are excused from prior exhaustion of domestic remedies because it's a futile requirement. But this is clearly an objection that is out of order and it is offensive for a sovereign State, such as Republic of Honduras. It is generally accepted as a matter of international law

that futility must be proven by the party that invokes it and the standard of proof is especially high.

This has been unanimously confirmed by the relevant case law and doctrinal writings. Some examples are up on the screen. This is also established in the Draft Articles on Diplomatic Protection of the International Law Commission. The same standard.

Proof of all the foregoing are the few Legal Authorities invoked by the Claimants among which one can note, because of its -- the particular relevance they had to accord it, the case of Ambiente Ufficio v Argentina. Nonetheless, as this Tribunal knows, this case has nothing to do with the instant case. In the case of Ambiente Ufficio, Argentina, by law, had closed the doors to its accords. This is the so-called lock law. And nothing similar has happened in this case.

So the antecedent cited by the Claimants don't even come close to proving the futility that they invoke, and it reflects a lack of respect for the institutions of the Republic of Honduras. And we

leave the Tribunal with these overheads which also respond to some of the precedent invoked by Claimants.

Now, to close out, let me briefly recapitulate the conclusions we've reached during the course of this argument. First of all, this is not just any case. Mr. Gil pointed this out, but, rather, a case in which what is at stake is the very sovereignty of the Republic of Honduras over its territory and which today is putting a test to the entire investment protection system.

Second, the applicable legal standard under Article 10.20.5 of DR-CAFTA makes it possible to review the facts that underlie the objection raised by Honduras as shown by my colleague Andrés Esteban.

Third, it is clear that Honduras's objection has to do with the very jurisdiction of the Centre and of this Tribunal and is not a mere admissibility issue.

As Mr. Figueroa explained, fourth, and as we've seen, Honduras conditioned, in keeping with Article 26 of the Convention, its consent to arbitration. It conditioned it on exhaustion of

domestic remedies by Legislative Decree 41-88, and the Claimants acknowledged that they have not done so.

Finally, the futility argument has no basis whatsoever.

For all these reasons, Mr. President, members of the Tribunal, the Republic of Honduras respectfully requests, pursuant to Article 10.20.5 of DR-CAFTA, that the Tribunal take up all of its arguments in its Preliminary Objection on failure to exhaust domestic remedies, which was a condition for ICSID Arbitration put forward by Honduras, therefore, it lacks jurisdiction and the Claimants should be ordered to pay all of the Costs of this proceeding.

Thank you very much.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you very much, Mr. Grob, and, with this, we conclude the presentation by the Republic. I am going to ask the Secretary of the Tribunal to give us an estimate of the time used. It must be one hour and a half. Quite tightly.

SECRETARY MONTAÑÉS-RUMAYOR: That's correct, Mr. President. I think that there were 2.5-minute

difference. We started a little bit after the hour.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. I thank you for observing the time guideline. We come back at 4:15 Spain time. We had said we were going to have -- so 4:15 we'll be back Spain time. Thank you.

(Brief recess.)

PRESIDENT FERNÁNDEZ-ARMESTO: Again, I kindly ask everyone who is not going to be speaking to stop their video recording.

And, with that, I give the floor to Claimants.

OPENING STATEMENT BY COUNSEL FOR CLAIMANTS

MS. SANTENS: Thank you, Mr. President. Good morning, good afternoon, Members of the Tribunal, representatives of the non-disputing Parties, our opposing Counsel. I and my colleagues from White & Case, Mr. Jijón, and Ms. McDonnell are delighted to be with you here today to present Claimant's position on Respondent's Preliminary Objection.

I would also like to briefly introduce our Client Representatives who are present with us today.

We have Mr. Erick Brimen, who is the CEO of Honduras Próspera Inc., and we also have Mr. Nick Dranias, who is the Company's General Counsel.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank you for being here with us.

MS. SANTENS: Members of the Tribunal, the question before the Tribunal in this preliminary phase is whether the Tribunal lacks jurisdiction on the ground that Claimants have not exhausted local remedies before bringing this ICSID Arbitration as Respondent alleges was required by the Declaration in Decree Number 41-88. The answer to that question, we submit, is clearly no.

The Parties agree that under the ICSID Convention arbitration is the exclusive remedy unless a State has required the Exhaustion of Local Remedies as a condition of its consent in accordance with Article 26 of the Convention.

The two instruments of consent in this case are the Dominican Republic-Central America U.S. Free Trade Agreements or CAFTA-DR, and the Agreement for Legal Stability and Investor Protection entered into

between Honduras Próspera and the Republic of Honduras on 9 March 2021, to which we will refer as the LSA.

As you will have noted Respondent did not require the Exhaustion of Local Remedies as a condition of its consent in either of these instruments. And Respondent's arguments that an extraneous instrument, a Declaration in Decree 41-88 by which it ratified the ICSID Convention in its domestic legal system regarding its intention with respect to future consents to ICSID Arbitration, implied an exhaustion requirement in these instruments is plainly incorrect.

To the contrary, as we will see, the CAFTA-DR and the LSA are both fundamentally inconsistent with such a -- requirements.

So we submit it is obvious there was no requirement for Claimants to Exhaust Local Remedies in Honduras before commencing this arbitration and that the preliminary objection is frivolous and should be dismissed.

And we also submit that Claimants should be granted all of their considerable and unnecessary

costs incurred in relation to the very extensive process for -- that Respondents, again, frivolous -- and we will show that -- wasteful and dilatory objection has given rise to, for several months already and for several more months to come.

Now, here on the next slide you can see the structure for Claimants' presentation today. We will first address the substance of the Preliminary Objection.

PRESIDENT FERNÁNDEZ-ARMESTO: Sorry. I cannot see. I see you on both screens. So let's get --

MS. SANTENS: Give us a moment, please.

PRESIDENT FERNÁNDEZ-ARMESTO: Yes, yes, yes. If you need five minutes, but I'm -- let me double-check with my colleagues. With -- no. They are also --

(Overlapping speakers.)

MS. SANTENS: I don't think we need --

ARBITRATOR RIVKIN: I was about to interrupt with the same problem. I'm not seeing the PowerPoint.

(Overlapping speakers.)

MS. SANTENS: -- and I think it is the mix-up between the two screens.

PRESIDENT FERNÁNDEZ-ARMESTO: Now it's perfect.

(Overlapping speakers.)

ARBITRATOR RIVKIN: All right.

MS. SANTENS: Thank you very -- sorry about that.

PRESIDENT FERNÁNDEZ-ARMESTO: No, that's okay.

MS. SANTENS: Okay. So now you can see on this slide the structure for Claimants' presentation today. Mr. Jijón will first show that Respondent's consents to arbitration in this case, in CAFTA-DR and the LSA were not conditioned on the exhaustion of local remedies.

He and I will then both explain the several reasons why Respondent's attempt to bring in an exhaustion requirement after the fact through an extraneous instrument, the Declaration, is baseless.

Ms. McDonnell will then show that Respondent's objection is also procedurally improper

at this time, as it is an objection to admissibility and not competence as required by Article 10.20.5 of the CAFTA-DR, which is the provision, of course, as you know under which the objection was brought.

And finally Mr. Jijón will show that even if Respondent required the Exhaustion of Local Remedies as a condition of its consents to arbitration in this case, which we submit it did not, such exhaustion would be futile in this case. And so it's not necessary under well-established principles of international law that Respondent's accepts would be applicable.

So we are going to focus on the issue presently before you. And I would submit, that's quite contrary to what Respondent did earlier this morning by dedicating half of its presentation to arguments that are clearly simply aimed at smearing Claimants and their investments and at trying to predispose the Tribunal on the merits of this case and also, it seems, on its Decision on the Preliminary Objection.

Now, you will know as very eminent and

experienced arbitrators, that you basically have to disregard half of what Respondents presented to you this morning, but we do want to point out how improper it is, in particular, as Claimants had foreseen this scenario and had asked that the Respondents be directed not to present a significant part on their presentation on issues that are irrelevant to the merits and that, during the pre-hearing conference, the President of the Tribunal confirmed that it is evident what the Tribunal is going to decide, and it is exclusively the issue of exhaustion.

We're not at all on merits issues, and the President asked the Parties to focus on the issue at hand, which is a hyper-technical issue. We will submit that Respondent did not follow this request from the presiding arbitrator, and we would also like to point out that it is equally a lack of the most basic courtesy to use a PowerPoint presentation that is half in Spanish when it is well known that one of the Tribunal Members doesn't speak Spanish.

Now, you will understand that while we, as Counsel, will submit to you that half of what you

heard this morning is completely irrelevant. Of course our clients and we are also wanting to correct some of the misimpressions that were brought to you this morning, and we will do so.

Now, before I get into it, I do want to say, this is necessarily going to be relatively brief. It is also necessarily not going to respond to anything and everything that you've heard this morning because we want to spend our time on the issue that matters today, and so I want to say in the most emphatic terms that everything you heard this morning is rejected.

It is denied, it is wrong, and we will disprove it at the appropriate time in the proceeding, which is the Merits phase.

But this morning we will make a few points and that is the following. Our clients spent significant resources building a transformative platform in Honduras that brought jobs and economic welfare to a country that has been plagued by poverty and unemployment for decades.

And our clients did so at the invitation of Honduras in reliance on and in application of the

legal system that Honduras put in place in the exercise of its sovereign right on its territory to provide for legislation for special economic zones. That is what Honduras did, and that is the invitation and the legislative framework that our clients responded to.

Now, you heard very clearly this morning that the current administration disagrees with what the prior administration did. But that does not make this a special case, as you heard this morning. Administrations disagree all the time with the politics of prior administrations.

That is, indeed, the temperature of the day, I would say, around the world, but investment arbitration was created exactly to avoid situations like this where one administration disavows what the prior administration did and seeks to abolish what the prior administration did and to abort rights that were created for investors and their investments without -- by trying to -- and trying to avoid the consequences of that.

And that is exactly what investment-treaty

arbitration is designed to do, that a scenario like that does not happen and that is exactly the scenario that would happen here if our clients didn't have the CAFTA-DR and the LSA and rights under international law for compensation.

Now ZEDE -- ZEDEs -- which is the acronym for Zones for Employment and Economic Development are an innovative form of special economic zone, again, that were created by Honduras in an exercise of its sovereignty.

Honduras is one of the poorest countries in the Americas, and it has been notoriously plagued by political instability, insecurity, rampant violence, and corruption, and it has struggled to attract over many decades to attract foreign investment, while Hondurans have emigrated to seek opportunities elsewhere.

And so Honduras developed the ZEDE Legal Framework exactly as a way to deal with these issues, by attracting investments and catalyzing development.

This began in March 2013 when Honduras amended its Constitution to authorize the

establishment of semi-autonomous zones subject to special legal regimes.

Then shortly thereafter in June 2013, it passed a ZEDE Organic Law which established a ZEDE legal regime and its scope in the Honduran domestic legal order.

Two months later in August 2013, it issued a Decree making ZEDEs a priority for the State. You can see that on the Slide.

And then in May 2014, the Supreme Court of Honduras upheld the constitutionality of the ZEDE Legal Framework.

Now, this Decision contrasts the ZEDE Legal Framework with Honduras's prior Special Economic Zone Initiative, which was known as the "REDs" and which you heard reference to this morning. That special regime had been previously found unconstitutional by the Courts. There were changes, significant changes made to the regime to create the ZEDE regime, and that regime was found constitutional by the Court.

Now, we heard this morning complaints about the constitution of the Supreme Courts at the time of

this Decision. And our submission in this respect is the same as I just made with respect to anything Respondent has said about the prior administration and the prior constitution of its courts.

It's irrelevant and irrespective of what Honduras now thinks of the former composition of its Supreme Courts and the international law Claimants were entitled to rely on the ruling of the highest court of the country at the time.

Now, following the Supreme Court Decision in 2014, Honduras designed and undertook a campaign to promote ZEDEs and the legal framework and to induce foreign investment in ZEDEs.

Among other things, the Minister of Economy retained international advisors to promote the ZEDEs, Honduran officials conducted international roadshows and promotional events, and Honduras' President described the ZEDEs in a speech to the United Nations as one of the best platforms in the world for investment and employment, highlighting that Honduras had guaranteed "legal, economic, administrative, and political" autonomy as well as "political stability

and transparency based on Treaties and international agreements."

That speech is available to you at Exhibit C-10. And it's in this context that Próspera's ZEDE was established by a representative of the Honduran State and Claimants in a joint venture as a transformative platform to provide an -- innovative regulatory environments and thereby generate business and employment in Honduras.

As you can see from the figure on the screen, which was prepared by the current Technical Secretary of Próspera ZEDE, the ZEDE shares many characteristics with other well-known and enormously successful special economic zones around the world.

Far from being the near apocalyptic disaster that Respondent would have you imagine, Próspera's ZEDE provides the infrastructure and conditions that allow for the creation of businesses. It has succeeded in attracting significant investment and in generating employment, precisely as Honduras wanted when it established the ZEDE legal framework.

Over 200 businesses have been formed or

registered to the business within Próspera's ZEDE across sectors. For instance, real estate development, commercial banking, education, including the world's largest Montessori school operator, remote staffing, drone delivery services, et cetera, et cetera.

Now, you heard Respondent this morning talking about physical residence in the ZEDE. What Respondent does not mention is that hundreds of construction, maintenance, and knowledge economy jobs have been created in Próspera ZEDE for the Honduran people and Próspera ZEDE notably has a minimum wage that is 10 to 25 percent higher than the Honduran minimum wage.

There is nothing improper going on. In Próspera ZEDE, there is nothing unsafe going on. To the contrary, the ZEDE has a legal framework that is much more sophisticated than that of Honduras itself, and the fact that is nothing is going on, that is improper or unsafe or somehow objectionable is that other than raising innuendo Respondent has not been able give a single example of any specific incident or

anything specific that would be objectionable in the ZEDE.

Now, a key aspect of the ZEDE Legal Framework that made investment in Próspera ZEDE possible was that Honduras granted investors robust legal Stability Guarantees and other protections important to long-term investments in a politically unstable country.

As you can see on the screen, there were multiple provisions guaranteeing legal stability. Now we will cover these in more detail when the time comes to do so at the merits phase. For now, we will suffice with saying that Claimants were entitled to 50 years of legal stability.

But after having created the ZEDEs, invited and encouraged Claimants to come and invest in Honduras, and having embraced the ZEDEs more generally for almost a decade a few years ago the political climate in Honduras changed. The minute President Castro assumed the Presidency in 2022, she and her administration have consistently vilified the ZEDEs and sought to abolish them, as you heard this

morning.

They have relentlessly pursued an attack and a target campaign, anti-ZEDEs, and anyone involved in them, labeling anyone involved in ZEDEs as guilty of treason, which a charge that is punishable with the death penalty in the country.

And they have succeeded in dismantling the ZEDE legal framework through a number of Measures, including repealing the ZEDE Law in April '22, in clear breach of its prior legal stability undertakings in law and contract to foreign investors.

They also attempted to remove the Constitutional provisions establishing and protecting ZEDEs, but that didn't work because President Castro was unable to gather the necessary political support.

So instead, the Administration ultimately turned to the Supreme Court of Honduras, which, in the meantime, had been conveniently stacked, among others with the aunt of her son-in-law as the presiding Justice of the Court. The Supreme Court abided and recently in September declared the entire ZEDE Legal Framework unconstitutional ex tunc. Mr. Jijón will

address the Decision in more detail later.

Suffice it to say for now that it has been plagued by scandal, has been a fortuitous excuse for the Government to accuse its political opponents again of treason even before the Decision was officially published, and has allowed the Administration to distract from countless scandals facing high-ranking government members, including several close relatives of the President herself.

So, with that, we will now turn to the question that is actually before the Tribunal. Which is whether Claimants were required to exhaust Local Remedies before bringing this ICSID Arbitration. As I said before, the answer to that question is clearly no. I'll turn now over to my partner, Mr. Jijón, who will start by addressing the issue.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Thank you very much.

Dr. Jijón, you have the floor.

MR. JIJÓN: Thank you, Mr. President.

Good morning, good afternoon to the members of the Tribunal, representatives of the Non-Disputing

Parties.

As my colleague explained, the issue today that is really before the Tribunal is whether Claimants were required to exhaust local remedies. They were not.

And I think the important place to start here is looking at Respondent's actual instruments of consent. There are two instruments of consent in this case: The Treaty and the Investment Agreement. That is CAFTA-DR and the Legal Stability Agreement. Both of these provide for ICSID Arbitration. Neither includes an exhaustion requirement. To be clear, the applicability of the Legal Stability Agreement is not at issue in this Preliminary Objection as will be addressed by Ms. Santens. Suffice to say, that allegation that we heard this morning, that the Legal Stability Agreement is an agreement between Honduras Próspera and itself, that is simply absurd.

Let's start with the Treaty.

CAFTA-DR does not require an Exhaustion of Local Remedies. CAFTA's investment chapter includes a detailed and carefully crafted investor-State

dispute-resolution mechanism. This is set forth in Section B of Chapter X of the Treaty which covers Articles 10.15 to Articles 10.27, exhaustive. As you can see on the screen, this covers nine pages of the Treaty not including multiple annexes.

Respondent's consent to ICSID is set forth in Article 10.17. Again, there is no reference to any prerequisite of local proceedings, and, in fact, Article 10.18, which you have on your screen, sets forth a number of conditions and limitations on the consent of each Party. That includes the Treaty's three-year prescription period as well as the waiver requirement for example, which all will be addressed by Ms. Santens. What it does not include is the exhaustion requirement which Respondent says is somewhere floating around in this Treaty. It's not there.

The Treaty Parties knew how to draft conditions of consent. They did for numerous other conditions. They did not do so for any exhaustion requirements.

Similarly, the Legal Stability Agreement

does not have an exhaustion requirement. Article 2.2 of the legal stability specifies that claims for monetary damages arising under the LSA shall be arbitrated at ICSID. In sum, we have two instruments of consent, neither requires the Exhaustion of Local Remedies, and Respondent doesn't even pretend that they include any exhaustion requirement. That should be the end of it, ladies and gentlemen. We shouldn't be here today.

So why are we here? Well, Respondent has come up with a novel argument for this case, something that it had never held or maintain in any way before it raised it to Claimants. It says that the Declaration in Decree 41-88 requires investors to exhaust local remedies as a precondition to ICSID Arbitration. Now, Members of the Tribunal, this is a beyond-flimsy thread on which to hang such an objection. As we shall see, the argument is fundamentally inconsistent with ICSID and has no legal basis. But critically, Respondent's reading of the Declaration itself is simply wrong. And it would not have not escaped the Members of the Tribunal's notice

this morning that Respondent continues to gloss over what the Decree actually is and what the Declaration actually says.

So let's take a look in actual detail. What you're looking at on screen is Decree 41-88. Decree 41-88 was the legislative act ratifying the ICSID Convention, as you've heard. It is not consent to arbitration or a condition on that nonexistent consent. As you can see on your screen, the Decree has two operative Articles. Those are the ones in the highlighted red boxes. Article 1 provides that the National Congress is approving Original Agreement Number 8, which is the agreement whereby the President of Honduras approved the ICSID Convention, and Article 2 merely provides when the Decree will enter into effect.

Then we have Original Agreement Number 8. The entire text is reproduced in the Decree. And by Original Agreement Number 8, the President of Honduras agrees to, one, to approve the ICSID Convention, and then follows the transcription of the ICSID Convention. As you can see from the red outline, the

transcribed text of the ICSID Convention takes up the vast majority of the Agreement in the Decree.

Now, if you take a look at the penultimate page of the Decree, you'll see a shaded-in gray island of text. That island of text nestled between the last article of the Convention and the list of signatories to the Convention, that is the Declaration. That is the actual place that the Declaration occupies. It is not the fundamental place that Respondent claimed this morning. That's the Declaration.

Now, Respondent has never, even to this day, explained the origin of the Declaration, when it was drafted, why it was drafted, how it came to end up tucked in this is transcription of the ICSID Convention. What is clear is that, contrary to what Respondent has suggested, this Declaration is not part of ICSID Convention, nor is it part of one of the operative articles to the Decree.

Let's look at the text of the Declaration itself. The Declaration is a forward-looking statement of intent. It does not mandate the Exhaustion of Local Remedies. On its face, it does

not impose any legal requirements. It makes no mandates. It establishes no obligations. None. None whatsoever.

Now, Respondent has focused -- "focused" is a strong word here because they glossed over it yet again today, but let's say they focused on the second sentence of this Declaration. But it's worthwhile to look at the entire thing.

Now, the Declaration is titled "Declaration of the Republic of Honduras." Respondent, to this date, persists on speaking about the Legislative Decree or DL or LD. This is just wrong. As we have seen, this is a declaration, not one of the Decree's operative article. It is tucked into the transcription of the ICSID Convention in the Original Agreement 8. And being a declaration, it serves to declare. And what is it declaring? Honduras's intent at the time. Nothing more.

Take a look at the first sentence. The first sentence declares that Honduras "shall submit to arbitration" under the ICSID Convention, but "only when it has previously expressed its consent in

writing."

Today Respondent said that this is a general rule and labeled this on its slide as -- I will say this in Spanish -- "sometimiento de la República de Honduras al arbitraje," the submission of the Republic of Honduras to arbitration.

(Overlapping interpretation and speakers.)

MR. JIJÓN: This is not an ICSID arbitration. It is an expression of Respondent's intent to submit to ICSID Arbitration. And when will it do so? Only when it has previously agreed in writing. This is the second sentence. The second sentence declares that investors shall exhaust administrative and judicial channels of the Republic of Honduras as a prior condition to ICSID Arbitration.

Now, Respondent says this is its condition of consent. That is clearly incorrect. There was no condition of consent because there was no consent to arbitration at this point.

Now, just as the first sentence did not obligate Respondent to submit itself to arbitration, this does not require Respondent to make the consent

to arbitration preconditioned on the Exhaustion of Local Remedies. At most, it was expressing Respondent's intent to make the Exhaustion of Local Remedies a precondition in what was at this point a hypothetical future consent to arbitration.

But the Declaration did not bind Respondent and, much less, did it bind the investor to do anything.

Now, this is the third sentence. The third sentence declares that the ICSID -- that in ICSID Arbitration, "the applicable laws shall be those of the Republic of Honduras" and that "only natural and legal Parties of ICSID Member States may bring claims."

Well, like the prior sentence, this is not binding on Respondent or on future Tribunals. It is simply announcing what Honduras intends to include in a future Arbitration Agreement.

Now, Respondent, today, tried to parse this reference to applicable law as also including international law. Now, that is clearly not what the Declaration says.

And even assuming that -- even assuming that this is what Respondent meant at that time, that simply confirms that the sentence was only informative and had no legal purpose because, in Honduras's reading, the sentence would add nothing.

In fact, none of these sentences add anything because they do not have a binding legal effect. Declarations are expressions of intent under international law. The fact that a Declaration is styled as a Declaration is significant, both as a matter of international law and because of the plain meaning of the term. According to the United Nations Treaty Collection Glossary of Terms: "Declarations merely clarify the State's position, and the term is often deliberately chosen to indicate that Parties do not intend to create binding obligations but merely want to declare certain aspirations." Declare certain aspirations.

According to the Max Planck Encyclopedia of Public International Law, Declarations are the means by which the States express their will, intention, or opinion. If States refer to a document as a

Declaration, this might generally suggest that they do not want it to have legal effect. According to the Diccionario Panhispánico de la Español Jurídico, that's the Panhispanic Dictionary of Legal Spanish published by the Royal Academy, the Spanish Royal Academy, and reputed international language authorities, the word "Declaration" is a "manifestation of will by the subjects of international law." Notably, Respondent doesn't even address this. They simply want you to ignore the word that it clearly there.

Now, Respondent has taken issue with our calling the Declaration what it is, calling it a Declaration. But it is not wrong to call things what they are. In fact, it is what we should be doing.

Now, I want to stress that just because the Declaration does not have a legal effect does not mean that it is meaningless. It does not deprive the Declaration of significance or of effet utile. It simply means that the declaration did not create a binding legal obligation. As the Max Planck Encyclopedia explains, most Declarations "only have a

political character and, if, at all, political consequences."

It was instructive today to hear the Procurador talk about what he thought that Honduras had meant back in 1988. Well, maybe they did, but that is not what the legal consequences are.

The fact is the Declaration is legally superfluous, and this is borne out by the fact that the content of the Declaration could not create any binding obligations. Each of these supposed terms and conditions in the sentences do not create binding obligations. They are actually unnecessary and would require additional steps under the ICSID Convention in order to be effective. Alone, they are superfluous.

The Declaration that Honduras shall submit to ICSID only when it previously expressed its consent in writing, that accomplished nothing. And why? Because Article 25.1 of the ICSID Convention already made consent in writing a basic jurisdictional requirement. Similarly, the Declaration that the applicable laws would be those of the Republic of Honduras accomplishes nothing. If Respondent wanted

Tribunals to only apply Honduran law, this would have had to have been agreed by the Parties in the Arbitration Agreement because Article 42(1) of the ICSID Convention provides that, absent an agreement, the Tribunal shall apply the law of the Contracting State and such rules of international law as may be applicable.

That is to say, that, absent some future agreement, the Declaration is just a Declaration.

Finally, the Declaration that only nationals of ICSID Member States may bring arbitration, likewise, superfluous. Article 25.1 already makes this a jurisdictional requirement.

So, like the rest of the provisions in the Declaration, for Honduras to make the Exhaustion of Local Remedies a precondition to arbitration, it needed to do something else. What? It needed to do so in accordance with Article 26 of the ICSID Convention which Ms. Santens will address in a moment.

All of this confirms that the Declaration was simply a forward-looking expression of intent, and, indeed, Respondent itself recognizes this. They

know this, ladies and gentlemen. They know that their argument is pretextual. When it says that all Article 26 required was for the State to express its willingness to require the Exhaustion of Local Remedies in writing, which it says was fully met in this case, it's wrong. That's not what Article 26 requires, as we shall see in a moment. But, as to the Declaration merely being an expression of willingness to require the Exhaustion of Local Remedies, on that at least we can agree.

Now, as we've seen, the Declaration did not impose any binding legal requirement, and, notably, Respondent itself must have felt the same way back in 1988 because shortly, a few months after ratifying the ICSID Convention, Respondent enacted into law an Investment Law that you have on your screen, and that law did not include consent to ICSID Arbitration. Instead, Article 29 reproduced the Declaration nearly verbatim.

Respondent repealed this law in 1992, as Respondent's Counsel itself noted earlier.

Now, what does this tell us? It means that

the subsequent legislative history itself belies Respondent's interpretation that the Declaration was a mandatory jurisdictional condition that already existed in Honduran law. If this were the case, Respondent would have had no need to put it into its law again. And the fact that it repealed it in 1992, the Tribunal should consider why. Why would it repeal in 1992? Well, it repealed the Investment Law because it wasn't working. Whatever Respondent may have wanted in 1989, whatever it may have intended, by 1992, it wanted to start entering into Arbitration Agreements. And it did so shortly thereafter, beginning in 1993, in fact, it started entering into BITs, Bilateral Investment Treaties.

Now, let's take a pause there because, if we assume, if, despite all this, we think that the Declaration had truly mandated certain terms in -- to use Respondent's words from this morning -- "black and white," as Respondent claims, we would expect to see these black-and-white conditions reflected in the subsequent Arbitration Agreements. We do not. But it's not only that we don't see the terms themselves

in the actual Arbitration Agreements, these Arbitration Agreements are fundamentally incompatible with the supposedly imperative terms that Respondent claims. The actual terms of the Arbitration Agreement belie that there was some "inexorable imperative." In fact, they are further evidence that the Declaration did not impose any binding legal obligation and that Respondent did not believe that it did so. As Claimants have shown, many of Honduras's Treaties from this time simply cannot be reconciled with the Declaration, if the Declaration is assumed to create binding legal obligations.

For example, the United States-Honduras Bilateral Investment Treaty, which was entered into in 1995, although it became -- it went into effect years later, it specifically provides that investors may submit disputes either to the Courts and Administrative Tribunals of the Parties or to arbitration, including to ICSID Arbitration. The Department of State's letter of submittal made it clear that this was to satisfy a policy of making arbitration an alternative to domestic courts. It was

to give investors a choice. Now, plainly, it doesn't make sense to give investors a choice in a world where the Declaration required investors to exhaust local remedies. What possible choice could they have had?

Now, the U.S. BIT not an outlier. On your screen, I've taken a handful of other examples, the Ecuador-Honduras BIT, the France-Honduras BIT, the Spain-Honduras BIT, the Central America-DRFTA, all of which specifically provide for a choice between Competent Courts and ICSID Arbitration. The same is also true about the applicable law provisions. As you can see, these very same treaties also provided for both national law and international law, and, again, the same is true of Respondent's own domestic law including its Investment Law of 2011 which also gave investors a choice between ICSID Arbitration and the ordinary courts of justice. Plainly, the Declaration did not apply as a general matter.

Now, ladies and gentlemen, Members of the Tribunal, prior to this case, Respondent never raised the Declaration. It never demanded Exhaustion of Local Remedies in any prior cases. It never argued

that the Decree established some jurisdictional Convention. Today, Respondent said that three of its prior cases were contract cases, as though that somehow differentiates them. That's irrelevant. So long as there's an ICSID Case, if Respondent is right that the Declaration is imperative, then they should have required the Exhaustion of Local Remedies. They did not. Their position is simply not credible. It is raising this objection now in the wake of the many cases launched as a result of the current Administration's anti-investment policies.

Now, so far, two other Tribunals have ruled on this. They have rejected Respondent's arguments in expedited procedures under ICSID Rule 41(5). Respondent wants to distinguish those cases because of the burden placed by Rule 41(5). What it doesn't tell you, which obviously, you, Members of the Tribunal, will know, is Respondent chose to bring it under Rule 41(5). It thought that it could meet that burden. It didn't.

Ultimately, it doesn't matter. As the Tribunal in the Autopista Case concluded there is no

doubt that Decree Number 41-88 does not constitute, per se, an offer to arbitrate. And it is not evident that Honduras's consent to arbitration was conditional upon the exhaustion of local, administrative, or judicial remedies. We would submit, and we would go one more further, not only is it not evident, it is evident that Honduras did not condition its consent on any such requirement. The Tribunal should likewise reject Respondent's arguments in this case.

With that, I hand it back to my colleague, Ms. Santens.

MS. SANTENS: Thank you.

PRESIDENT FERNÁNDEZ-ARMESTO: Please.

MS. SANTENS: Thank you, Mr. President.

So I will now address Respondent's argument that the Declaration was a valid exercise of its right under Article 26 of the ICSID Convention to require the Exhaustion of Local Remedies, and I will show that the argument is plainly incorrect.

Article 26 provides that consent to ICSID Arbitration is to the exclusion of any other remedy unless the State required the Exhaustion of Local

Remedies as a condition of its consent to arbitration under the ICSID Convention.

Now, the phrase in the second sentence of Article 26 that you see highlighted on the screen means that such a requirement must be part and parcel of the State's consent to ICSID Arbitration and, therefore, included in the instrument of consent. Professor Schreuer confirms this, as you can see on the screen, confirming and explaining that the "condition of consent may be expressed in a treaty offering consent to ICSID Arbitration, in national legislation providing for ICSID Arbitration, or in a contract with the investor containing an ICSID Arbitration clause."

Now, these are, as the Tribunal well knows, exactly the three instruments in which consent to ICSID Arbitration is typically provided by States.

The Declaration, however, is not included in an instrument that provides Respondent's consent to ICSID Arbitration. And that, Members of the Tribunal, is fatal to Respondent's Preliminary Objection.

As Mr. Jijón has explained, Decree 41-88 was

the legislative act by which Honduras ratified the ICSID Convention and its internal legal system, and as you can see on the screen, Respondent acknowledged that in its Reply. Now, as you can also see, Respondent also concedes that the Decree did not constitute its consent to ICSID Arbitration and that an additional consent was required. Now, Members of the Tribunal, we again submit that, with this admission, Honduras has dug the grave of its own Preliminary Objection because, as Decree 41-88 did not constitute a consent to ICSID Arbitration, it also cannot possibly have included a condition on that consent as there was no consent to be conditioned.

It's uncontroversial that the State's ratification of the ICSID Convention does not constitute consent to arbitration thereunder. Rather, after a State becomes a member of the ICSID Convention, it may then choose to consent to arbitration to arbitrate disputes before ICSID. That is set out clearly in Article 25.1 of the ICSID Convention, which provides that the jurisdiction of the Centre extends to a dispute which the Parties to

the consent -- to the dispute consent in writing to submit to the Centre. It is this consent in writing that must be conditioned on exhaustion in order for a State to validly exercise its rights, its rights under the second sentence of the Article 26, which is, of course, the very next provision in the Convention to require exhaustion.

And that is borne out by ICSID's classification of Decree 41-88. You heard this morning and Respondent relied in the papers on the fact that the Decree was listed in Document ICSID/8. Now, that document, as you can see on the left of the slide, lists all the Measures taken by Contracting States for the purposes of the ICSID Convention, and contains various sublists that list the Measures taken in relation to various articles in the ICSID Convention.

And as you can see on the right of the slides, ICSID listed Decree 41-88 in sublist ICSID/8-F, which lists "legislative or other measures" taken by the Contracting States "pursuant to Article 69 of the ICSID Convention."

Now, as you well know, Article 69 is the article in the ICSID Convention that requires "each Contracting State" to "take such legislative measures or other measures as may be necessary for making the provisions of this Convention effective in its territory."

So, basically, this list lists the Contracting States' domestic legislation ratifying the ICSID Convention. For Honduras, it shows that Honduras ratified the ICSID Convention through 41-88; nothing more, nothing less.

Now, it is important to note that ICSID only lists the Decree here and not the Declaration within it that Respondent relies upon. And it is also important to note, as you can see on the next slide, that neither Decree 41-88 nor the Declaration in it, were listed in document ICSID/8-D where ICSID lists the notification needs by States that they intend to require the Exhaustion of Local Remedies as a condition of their consent to ICSID Arbitration.

Three States so far have done so. And that is what you can see in this document, and can you also

see there is no such notification by Honduras. And, of course, that is because the Declaration does not have the effect that it now says it has.

In any event Prof. Schreuer explains that, if a State gives advance notice that it will require the Exhaustion of Local Remedies as a condition of its consent to ICSID Arbitration by way of a general notification to ICSID. This is a statement for informational purposes only without any binding effect.

Prof. Schreuer explains that the requirement must be in the instrument of consent. He says at the end of the quote here that, if a State subsequently consents to ICSID Arbitration in terms inconsistent with the prior general notification, the consent will prevail over the notification.

As you can also see on the slide, Prof. Schreuer likens the State's notification of its intent to condition -- to require Exhaustion of Local Remedies to a notification under Article 25(4) of the ICSID Convention both of which he classifies as nothing more than an enhancement of the State's

intentions as you can see.

Now, the Tribunal well knows that Article 25(4) of the ICSID Convention provides that a Member State may notify the center of the classes of disputes that it would or would not consider submitting to the jurisdiction of ICSID. And if we turn to the next slide, the Tribunal in PSEG v. Türkiye was required to assess the legal import of such a notification by Türkiye pursuant to Article 25(4) of the ICSID Convention.

And relevant for present purposes, as you can see, the Tribunal considered such a notification of a form of Declaration. And it held that "these Declarations do not alter the legal rights and obligations under the Treaty, nor do they amend any of its provisions. They are simply an instrument that allows States to express questions of policy to which they are not bound and that do not create rights for the other parties."

The Tribunal specifically found that "it follows that, to be effective, the contents of such unilateral declarations will always have to be

embodied in the consent that the Contracting Parties will later give in its agreements or treaties; otherwise, the consent given in the Treaty stands unqualified by the notification."

Members of the Tribunal, the exact same principle applies here as regards Respondent's Declaration and Decree 41-88.

Now Respondent's only arguments -- support for its arguments are a couple of Authorities that note that a State may validly impose an exhaustion requirement in its national legislation. And we saw Respondent go through these, again, this morning, but Respondent mischaracterizations these authorities.

All they show is that an exhaustion requirement may validly be included in an Investment Law containing an offer of ICSID Arbitration, as a condition of that consent. They only further confirm Claimants' position that an exhaustion requirement must be an instrument of consent as a condition of consent.

For instance, in a law by a State consenting to ICSID Arbitration in an offer of arbitration that

may then be accepted by the investor. That's all they support. They don't support Respondent arguments that a Declaration in its internal instrument ratifying the ICSID Convention of its willingness to require Exhaustion of Local Remedies in future consents to ICSID Arbitration is a valid exercise of Article 26.

So let's briefly go through them. Respondent again, we saw this morning relies on Lanco v. Argentina. That Decision is mischaracterized by Respondent. The Tribunal in Lanco confirms, as you can see, that an exhaustion requirement may be in a bilateral investment treaty in domestic legislation or in a Direct Investment Agreement that contains an ICSID clause.

It is simply confirmation that an exhaustion requirement may be included in any of the three instruments in which States consent to ICSID Arbitration may typically be found. Just like the Schreuer excerpts that we looked at a few moments ago.

Now, that is confirmed by the Tribunal in Generation Ukraine, which you also saw this morning. What you weren't told this morning, but can you see on

the screen, is that that Tribunal explicitly held that an exhaustion requirement "must be contained in the instrument in which such consent is expressed." That is what the Generation Ukraine Tribunal said.

And in support of that, it quoted the Lanco passage that we just saw in support, clearly indicating that the Generation Ukraine Tribunal considered that passage from Lanco v. Argentina including the reference to domestic legislation to stand for the proposition that an exhaustion requirement must be included in an instrument of consent.

Now as you can also see highlighted in the second part of the quote, the Generation Ukraine Tribunal also held that once the investor has accepted the ICSID -- the State's offer to arbitrate, no further limitations or restrictions on the reference to arbitration can be imposed unilaterally by the State as Respondent seeks to do here.

Respondent is also not availed by the ICSID travaux. Again, it blatantly mischaracterizes the quote about Mr. Broches this morning alleging that it

supports a proposition and that it shows that the ICSID Convention drafters supposedly expressly provided for the possibility to express exhaustion requirements in domestic legislation that does not contain a consent to ICSID Arbitration.

Mr. Broches simply doesn't say that here. He merely restates the general rule of Article 26 of the Convention, that "where there was consent to submit a dispute to the center, this would mean that the Exhaustion of Local Remedies has been waived." And he then explains that when a "State included a unilateral provision in the legislation for encouraging investments, that Investment Agreements would be subject to international arbitration. Such a provision would be taken to exclude local remedies unless a contrary intention was expressed."

Again, it's clear that Mr. Broches is referring to an Investment Law containing a State's unilateral consent to arbitration and not other legislation, as Respondent tries to argue.

He also later confirmed that when a State had entered into an agreement with an investor

containing an arbitration clause unqualified by any reservation regarding prior exhaustion of local remedies this State could not, thereafter, demand that the dispute be first submitted to local Courts.

Now, finally, Respondent is also not availed by the short editorial of former ICSID Secretary-General Ibrahim Shihata promoting ICSID to Latin American States. Of course, as you well know, that is not even a source of law or even persuasive evidence. But unable to rely on any other source, Respondent's reliance on this source becomes ever more insistent. And we heard that this morning, almost going it seems so far this morning as accusing ICSID of somehow misleading Respondent into thinking that the Declaration would have the effect that it now claims.

That is, obviously, wrong. All the Secretary-General did was in the context of explaining an approach that had been attempted by a single State, commenting that a State's Declaration of its intent to avail itself of Article 26 at the time of signing or ratifying the Convention might result in achieving the

objective of requiring the Exhaustion of Local Remedies.

The phrases "that it intends" and "will require" show that this is simply a recognition that States may make forward-looking Declarations of intent to require the Exhaustion of Local Remedies and nothing more.

You also saw this morning the picture of a seminar, apparently in São Paulo, where Mr. Shihata was apparently present. There is no evidence at all in the case that Mr. Shihata commented on this issue at that seminar.

And, finally, we also saw this morning an excerpt from "staphonshoke" (phonetic). That is RLA-055, Paragraph 780. I would encourage you to read that excerpt. It was also completely mischaracterized this morning, and it was because it was again about unilateral instruments of consent and not other legislation.

So, in sum, Respondent is unable to muster a single source supporting the position that an exhaustion requirement in domestic legislation, that

does not include a consent to arbitration, is a valid exercise of Article 26, let alone the position that a Declaration of future intent would constitute such an exercise.

I also want to note that Respondent's position that all its subsequent consents to ICSID Arbitration are subject to an exhaustion requirement because the requirement was included in its instrument ratifying the ICSID Convention, as you can see on the screen, is also completely unavailable. Honduras doesn't explain the precise legal source of its position, and I submit that it is because there is no cogent legal explanation for the position.

Respondent appears to argue that somehow the ICSID Convention must be understood as including with respect to Respondent an exhaustion requirement for any consent to ICSID Arbitration. That is, with respect, simply not sustainable under international law. The argument would amount to an argument that Honduras adopted the ICSID Convention with reservation, and we explained in our Rejoinder that that is simply legally impossible.

Now, that is probably why Respondent, after it first argued in this case in a letter to ICSID that the Declaration did constitute a reservation to the ICSID Convention, it has now abandoned that argument, both in this case and in the other two cases that are on record where it had raised the Declaration as an objection.

Now, I want to underscore with you that, having had to retreat from the reservation argument, Respondent has been unable to articulate an alternative legal concept for the position that the fact that the Declaration was included in the Decree ratifying the ICSID Convention means that it is -- in Respondent's words -- "it is naturally applicable to all its subsequent consents to ICSID Arbitration whatever the instrument of consent and whatever that instrument says." That is, of course, because the position is simply not legally sound.

To conclude on this point, it is clear that there is no basis for Respondents attempt to distort the terms of Article 26 and the manner in which States may require the Exhaustion of Local Remedies as a

condition of their consent to ICSID Arbitration.

Now, I'm now going to show that Respondent's arguments is legally flawed for a number of other reasons, as well. And again, before I do so, I want to reemphasize with you that Respondent has not provided any support for its argument that terms may be implied in consents to ICSID Arbitration.

And, again, I submit that that is because there is no support for such an argument. It is simply wrong. It makes no sense of a legal matter. And Respondent's objection is just a futile effort to improperly change the terms of its consent to ICSID Arbitration in this case after the fact.

As you well know, an often-quoted passage of the Report of the Executive Directors on the ICSID Convention is Paragraph 23, which says that "consent of the Parties is the cornerstone of the jurisdiction of the Center" and that it "must be in writing."

Now, as States' consent to arbitration and the specific terms and conditions of that consent are fundamental to ICSID Arbitration and cannot be presumed or implied.

That is, of course, because of the acts of consenting to international arbitration with an investor, a State waives its sovereign jurisdictional immunity. And the terms of such a waiver, including the conditions and terms thereof, must be clear and unambiguous.

But Respondent's implied term arguments does exactly the opposite. It presumes that the terms of an ICSID Arbitration Agreement need not be apparent on the face of the instrument on which consent is given.

And that, Members of the Tribunal, obviously contradicted the well-established rule that a State's consent to arbitration must be explicit and expressed in a manner that leaves no doubt. And that Rule, of course, also applies to the terms of an Arbitration Agreement and any conditions required to invoke a State's consent, which cannot be implicit.

That is critical from the point of view of legal certainty because investors must know which terms and conditions they must comply with before they invoke ICSID Arbitration.

Now, Tribunals have consistently found that

the terms of conditions of a State's consent must be explicit in the writing contained in that consent and cannot be implied.

You heard it this morning. We have relied on the jurisprudence of Tribunals addressing the requirements for the incorporation of terms of consent from another instrument through Most-Favored-Nation Clauses in investment treaties.

And that jurisprudence has found that incorporation is inappropriate if the terms of the consent are not clear and unambiguous. On the next slide, we have one example which is Daimler v. Argentina, where the Tribunal was required to determine whether the investor could circumvent the 18-month litigation requirement in the Germany-Argentina BIT through the MFN Clause in that BIT and the dispute-settlement provision of the Chile-Argentina BIT that did not contain such requirements.

As you can see here, the Tribunal found that "the existence of consent must be established," that "establishing consent requires affirmative evidence,"

and that "what is true of the very existence of consent to have recourse to a specific international dispute-resolution mechanism is also true as far as the scope of this consent is concerned."

I will skip the next slide in the interest of time. But what I do submit to you is, of course, that Honduras here is seeking to incorporate the alleged terms of the Declaration into CAFTA-DR and the LSA.

Now, if Honduras wanted the terms of Declaration to apply to either of these subsequent consents to ICSID Arbitration, at minimum, it would have had to makes explicit reference to the Declaration as a condition of its consent in these instruments. So that its intention to incorporate the terms and conditions was clear and unambiguous.

Now, as you have, of course, already seen, Respondent didn't do that in either of these instruments.

Now, I'll also submit to you that implicit incorporation of a condition of consent as Respondent argues is, by definition, even less express than

incorporation by reference.

Now, if incorporation by reference can only be done if it clear and unambiguous, implicit incorporation by definition is not possible. It is simply not clear and unambiguous.

Now, Honduras's implied exhaustion requirement is particularly untenable in this case because it is incompatible with its consents to arbitration in the case.

So let's now first turn to the consent in CAFTA-DR. As my colleague already showed earlier this morning, CAFTA-DR has a very detailed chapter on dispute resolution, including specifically in Article 10.18 that is specifically titled "conditions and limitations on consent of each party."

As we will see in a moment, Annex 10-E of CAFTA-DR also includes yet additional limitations with respect to submission of claims by U.S. investors. The idea of an additional, implicit, condition on consent for any investors wishing to bring a claim against Honduras is frankly absurd.

Had Honduras wanted to include exhaustion as

yet another condition of consent in CAFTA-DR it could, would, and should have done so. It didn't. Instead, it agreed to conditions of consent that are fundamentally incompatible with an exhaustion requirement.

First, as we have shown, the alleged exhaustion requirement is obviously incompatible with the waiver requirements in CAFTA-DR. The plain text of Article 10.18.2 requires a Claimant to waive "any right to initiate or continue any local proceedings with respect to any measure alleged to constitute a treaty breach."

Members of the Tribunal, that provision necessarily presumes that local remedies have not already been, exhausted; otherwise, there would be no local proceedings to initiate or continue that could be waived.

And so, therefore, implying an exhaustion requirement into the Treaty as Respondent seeks to do, would deprive the waiver requirement in CAFTA-DR of all meaning, would leave it without object and purpose and would leave it without any effet utile, contrary

to well-known international law principles that treaty provisions must be interpreted in good faith, and in the accordance with the principle of effectiveness.

And that is supported by the Decision in Metalclad v. Mexico where the Tribunal found that Mexico's Decision not to insist on the needs for Exhaustion of Local Remedies was correct in light of the waiver provision in NAFTA, which is basically identical to Article 10.18.2 of CAFTA-DR.

Now, this morning you heard Respondent say again that Metalclad is somehow different because there Mexico relied on Article 26 of the ICSID Convention. But that is irrelevant. The relevant point of this case for your purposes is, as we already explained, the Tribunal's conclusion that Mexico's Decision not to insist on the need for Exhaustion of Local Remedies was correct because it would have been incompatible with the waiver condition in NAFTA which is, again, virtually identical to Article 10.18.2 of CAFTA-DR.

I will also briefly remind you that Respondent's presentation of Corona Materials

LLC v. Dominican Republic in this context is also misplaced. All the Tribunal in Corona Materials did was to note that Article 10.18.3 of CAFTA-DR allows "seeking interim injunctive relief that does not involve the payment of damages for the sole purpose of preserving the Claimants' rights and interests during the arbitration."

That is obviously entirely different from seeking a local remedy for the alleged wrongful conduct, which evidently is not permitted by Article 10.18.3, and so the Corona Materials pronunciation on this provision is entirely irrelevant to the issue before you.

Now, the second point of inconsistency -- I'm told that I need to try to go a little bit quicker.

So the second point of inconsistency are the fork-in-the-road provisions in CAFTA-DR as we showed in our pleadings. In response to that, Respondent relies on the triple identity test. We will submit to you that, as you well know, that is one line of interpretation of fork-in-the-road clauses. There are

many other cases that find that fork-in-the-road clauses are much more complicated than that.

For instance, the Tribunal in Pantechniki said that the relevant test was the fundamental basis of a claim, and so, to rely simply on the triple identity test is insufficient.

What is important here is that, as soon as there is one element of inconsistency between the fork-in-the-road clauses in CAFTA-DR and the implied exhaustion requirements, that shows that the implied exhaustion requirement is simply incorrect. And we submit to you that there are clear points of inconsistency.

One you can see here on the slide, Article 10.18.4: "Explicitly prohibits investors from submitting to arbitration claims for breach of an investment authorization or an Investment Agreement that were previously brought in local proceedings."

So if you bring a claim for breach of an Investment Agreement in the local proceeding, you are now barred from bringing it in the ICSID Arbitration.

Now, that's obviously inconsistent with an

exhaustion requirement because a claim for breach of an Investment Agreement by definition would then need to be brought in the local courts, and at the same time, bar the Claim under Article 10.18.4. That is simply not possible.

We also submit that there is an inconsistency with Annex 10-E. Annex 10-E, again, prevents U.S. investors who have brought claims in local courts from bringing them to ICSID Arbitration.

Now, Respondent says that the fork-in-the-road provisions operate on a different plane. They do not. And it is well known, and we can see on the next slide, that in countries like Honduras, claims for breaches of international law can be brought in local courts.

And so if we take Respondent's objection at face value, and its interpretation of the Declaration at face value, that would mean that Claimants would need to bring claims for breach of international law in the Honduran courts because Claimant supposedly, under Respondent's theory, need to bring any and all and exhaust any and all local remedies. And so if

that is required, obviously there is an inconsistency with the fork-in-the-road provision in Annex 10-E because by bringing that claim again, Claimants would ipso facto be brought by bringing international arbitration.

The third area of inconsistency is the prescription periods. I am going to skip that in the interest of time. It is well explained in our Pleadings.

I do want to make the point that if you take Honduras' argument at face value, it means that you need to find that Honduras acted in bad faith, vis-à-vis its CAFTA-DR Treaty partners, because had Honduras considered that the Declaration would imply an exhaustion requirement in CAFTA-DR and had it agreed to these provisions that are inconsistent with such a requirement, it would have acted in bad faith vis-à-vis its Treaty partners because it would not have given them any warning that it would insist on their nationals complying with an additional exhaustion requirement that is not expressed in CAFTA-DR.

And we submit that you should find that Honduras did not act in good faith, that Honduras did act in good faith in its CAFTA Treaty Negotiations and so that the implied -- it is the implied exhaustion requirement argument that it raises now that is in bad faith.

Now, there is also inconsistency with the LSA. Again, it is very similar to an Investment Agreement. As you can see on the screen, the LSA has a clause requiring ICSID Arbitration for contractual claims. Again, obviously that requirement is inconsistent with having to bring a contractual claim in the Honduran courts.

What I want to focus on, though -- this is well explained in our papers. So what I want to focus now on is -- for a moment, is Honduras's arguments that -- the new argument that the LSA is not applicable because it supposedly didn't agree to it.

What we want to say about that is it is procedurally improper for Honduras to bring that argument now. If Honduras wanted to bring Preliminary Objection that the LSA is not valid, it could have

done so under Article 10.20.5. It didn't do it, and so it cannot bring in that objection now through the back door.

All that is before you today is whether there is an exhaustion requirement in the -- implied in the LSA, assuming that it is valid. That is all that is before you today. The rest, again, is untimely. It will come up later, but is not part of what you need to decide now, and so for purposes of your decision on the Preliminary Objection you must accept, for present purposes, that the LSA is valid.

And with that, I will turn it over to my colleague, Ms. McDonnell.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Thank you. Let me get you -- because I see you are -- I've heard you were pressed by time, let me ask our secretary to give you a time check so that you know how much time you have and you can use your time properly.

SECRETARY MONTAÑÉS-RUMAYOR: Thank you, Mr. President. I think Claimants have used one hour and 17 minutes.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. There is, as there was with Respondent, a little bit of leeway.

MS. MCDONNELL: Thank you.

Good morning, Members of the Tribunal and the Non-Disputing Parties. As you will see today, Respondent's Preliminary Objection is an objection to the admissibility of the claims and not to the Tribunal's competence.

Article 10.20.5 commits Respondent to raise an objection to the competence of the Tribunal. Objections based on the admissibility of claims are not proper in under Article 10.20.5. As the Desert Line v. Yemen Tribunal explains, admissibility objections requests that "an ICSID Tribunal having jurisdiction should nevertheless decline to exercise it."

Likewise, Respondent's objection questions whether the Tribunal should exercise jurisdiction in circumstances where Claimants have not exhausted local remedies. Respondent says that the Preliminary Objection is an objection to the jurisdiction of the

Tribunal because its consents to this ICSID Arbitration were conditioned by the Declaration in Decree 41-88 as an exercise of the second sentence of Article 26 of the Convention.

This is incorrect. And it is inconsistent with the VCLT interpretation. Beginning with the ordinary meaning, the second sentence of Article 26 states that: "A State may require the Exhaustion of Local Remedies as a condition of its consent to arbitration." But not all conditions of consent go to jurisdiction, and a facile conflation of the two is a legal error.

Tribunals have found that certain conditions of a State's consent to arbitration, although included in the dispute settlement provision of investment treaties, are actually procedural in nature, and will not deprive a tribunal of jurisdiction if not complied with, but may render the claim inadmissible. We see this in two examples on the screen.

Now, turning to the object and purpose, the second sentence of Article 26 permits a State to revert back to the international law rule, which, as

we shall see, makes this a question of admissibility and not competence. The Report by the ICSID Executive Directors explicitly states that Article 26 "was not intended to modify the rules of international law regarding the Exhaustion of Local Remedies," and the second sentence explicitly recognizes the right of a State to require the prior Exhaustion of Local Remedies.

Now, Honduras agrees with this. They stated in their Preliminary Objection that they intended to preserve the traditional international law rule of exhaustion. This, of course, includes the workings of the rule under international law and its impact on the admissibility of international claims.

As we see in the first quote, the exhaustion rule under international law has the same purpose within an investment arbitration context. It allows a State to consider a claim before it has to go before arbitration.

Now, under international law, the local remedies rule has traditionally applied in the context of the protection of foreign nationals through

diplomatic protection.

Now, within diplomatic protection and within international law, it has always been considered as a precondition to the admissibility of an international claim. As we see in the next slide, Article 44 of the ILC Articles on state responsibility is titled "Admissibility of Claims" and confirms that responsibility of the State may not be invoked if an injured person has not exhausted local remedies.

The ICJ has also consistently treated Exhaustion of Local Remedies objections as directed against the admissibility of a claim and not a challenge to the ICJ's jurisdiction. This was the finding in the cases such as Interhandel and ELSI, both of which Respondent relied on in its Preliminary Objection and which we see here on the slide.

Now, as already explained, the international rule of exhaustion that Honduras says it sought to preserve does not change when applied under a treaty and may, at most, impact the admissibility of an investor's claims, if that.

Respondent's alleged preservation of the

international law rule could not possibly have changed the Rule to a jurisdictional requirement that it simply never was under international law.

Now, as Respondent admits, an exhaustion requirement pursuant to Article 26 is "a precondition for initiating arbitration against a State."

The Declaration, of course, does not contain an exhaustion requirement. But if it did, it would be, as described in the Declaration, a "precondition for the implementation of the dispute settlement mechanisms." This would clearly make it a procedural requirement to invoke Honduras's consent if it were a proper exercise of Article 26, which, of course, it is not.

Now, put simply, a State provides its consent to arbitrate disputes with investors, which is binding when the Treaty entered into force. Investors as third-party beneficiaries can invoke that consent by initiating arbitration, provided they comply with any procedural conditions, for example, by exhausting local remedies. These conditions are separate from the fundamental question of whether the State has

provided its consent to arbitration.

As BITs rarely require true exhaustion, there are no examples of Tribunals deciding on the nature of such a requirement. But, on the other hand, many treaties have a partial exhaustion requirement for a defined period of time, and Tribunals have found that those requirements are procedural and pertain to admissibility.

As we see on the screen, The Ickale v. Turkmenistan Tribunal found that the Local Litigation requirement was part of the procedure that the investor had to follow to invoke the consent. In the context of Article 26 of the ICSID convention, the Majority of the Tribunal confirmed that consent is unconditional when the Treaty entered into force. The Majority went on to say that they are conditioned to invoking consent which are procedural, rather than jurisdictional.

In the interest of time, I will skip the quotes, but you have them on your screen.

This was also the finding of the Tribunal in Hochtief v. Argentina, which also followed a similar

approach, and found that the 18-month litigation requirement was a question of admissibility as it related to the manner in which the right to have recourse to arbitration should be exercised. This was also the finding of the Abaclat Tribunal.

Now, the distinction between a jurisdictional and admissibility objection is obvious when one examines the consequence of the Tribunal's acceptance of the objection, as the Abaclat Tribunal explains.

Now, assuming for argument's sake, if the Tribunal were to accept Respondent's Preliminary Objection, putting aside the reality that local proceedings would be futile, Claimant would theoretically not be prevented from resubmitting the same claim as ICSID under the CAFTA-DR following the Exhaustion of Local Remedies. Respondent itself argues this.

The Tribunal could also theoretically suspend the proceedings pending fulfillment of the exhaustion requirement.

Now, as the Tribunal is aware, this would

obviously not be possible if Claimants lacked an essential jurisdictional condition, such as U.S. nationality.

Now, as we see on the screen, there are exceptions to the local remedies rule, including futility, undue delay, and waiver by a State. This is the same in investment arbitration. And Respondent accepts this.

Now, if such a requirement exists, which it does not, which it does not, this requirement would have been waived by Honduras when it entered into subsequent consents to arbitration that do not require the Exhaustion of Local Remedies and when it acquiesced to investors noncompliance with this requirement by failing to raise the objection in prior concluded arbitrations.

If this requirement created a jurisdictional condition, the Tribunal should have raised it sua sponte. They did not, showing that the Declaration did not create a jurisdictional condition.

Now, in sum, Members of the Tribunal, you should find that Respondent's objection was not

properly brought under Article 10.20.5. Notwithstanding this, as the Parties have already fully briefed this issue, and in the interest of efficiency, the Tribunal should also dismiss this objection because it is clearly, legally without merit.

I now turn over to my colleague, Mr. Jijón.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good.

MR. JIJÓN: Members of the Tribunal, I'm going to be explaining very briefly why the Exhaustion of Local Remedies would be futile, and I can be brief because Respondent has not really presented any questions either as to the legal standard or as to the relevant facts.

Even assuming that Respondent had required the local -- or the Exhaustion of Local Remedies, which we maintain it has not, the additional reason that its objection must fail is because local remedies would be futile.

Under international law, it is well-established that local remedies need not be exhausted if they would be futile, and this is set

forth, for example, in Article 15 of the ILC Articles, which you have on your screen, and which my colleague has already alluded to. Notably Respondent does not question this. The futility standard is applicable.

This is also, just for the record, been applied by numerous investment Tribunals. This morning my colleagues on the other side mischaracterized the Ambiente Ufficio case. Just to note very briefly that in that case the Tribunal not only said that the ILC's restatement of the standard was well-reasoned and well-balanced, it specifically looked at the actions of the local courts and, in particular, the actions of the Supreme Court in other cases and found that that was instructive of what Claimants would have encountered had they gone to local domestic procedures.

Similarly, the case in Lion was also instructive.

And, very briefly, the standard is amply met in this case. Respondent does not offer any adequate system of judicial protection. Claimants would have no reasonable possibility of redress in the Honduran

courts.

As a general matter, there is a huge number of issues that plague the Honduran judiciary. I'm not going to go into all of them now. They have been discussed in our pleadings. Just to note that the grave difficulties, the grave issues plaguing the Honduran judiciary have been noted both by the special U.N. High -- Rapporteur to the U.N. High Commissioner of Human Rights, by the Special Report of the Interamerican Commission on Human Rights, by Freedom House, which is an independent group, as well as by the U.S. Department of State.

And, in particular, the U.S. Department of State has noted in its 2024 Investment Climate statement that the Honduran judiciary system can be inefficient, lacks transparency, and is subject to political influence and corruption.

In particular, they say -- and they say there are frequent reports of corruption within the judiciary, both at the local level and before the Supreme Court, and they report that the President of the Supreme Court has family ties to the President of

Honduras, and the "commentators and NGOs have pointed out that those ties raise doubts as to the Court's independence." This isn't us saying this. This is the United States Department of State reporting on its findings.

Similarly, Respondent's own officials have recognized the judiciary's problems. According to then-Minister of finance, Rixi Moncada: "The justice system is 'in rags' and penetrated by criminal networks and corruption."

According to the current presiding justice of the court, her challenge "is and has been to unravel networks of corruption with links to organized crime."

And again, Respondent's own policies recognize some of the judiciary's problems. This very year Honduras launched a plan to combat issues of undue delay in its Courts. As you will have read in our pleadings, the study that Honduras undertook for this plan found that 65 percent of the cases in the Honduran judiciary were in a state of judicial delay. Some of these dated back years, many decades.

And according to the diagnostic by Respondent as to the cause of such delays, among other numerous factors, were that procedures in Honduras are insufficient and excessively formalistic. This is Honduras -- this is Respondent's own words.

Now, if these things are generally true in Honduras, it is far worse with respect to the ZEDEs. Claimants in particular would have no possibility of local redress. And you don't have to take my word for it, Members of the Tribunal. My colleagues, on the other side themselves said that -- and we heard repeatedly this morning that there is a "absolute consensus among Honduran institutions that the ZEDEs were illegal, absolute consensus."

Now, naturally, Claimants do not agree with practically anything actually that Respondent has been alleging, but we do agree that, if Claimants were to go to a Honduran court, one of those Honduran institutions, this would be the position that it would confront. And, in particular, this has been borne out by the recent decision of the Supreme Court that declare the entirety of the ZEDE Legal Framework

retroactively unconstitutional.

You can read more about this in our pleadings. Just for current purposes, I'll note that this case originally came to the Court as a petition, not questioning the unconstitutionality of the entire ZEDE regime but only one article of the ZEDE Organic Law, Article 34, which dealt with education policy.

Now, as you will also have read, the ZEDE Law was repealed in 2022. Yet, what did the court do? Instead of finding that the case was entirely moot --

MR. FIGUEROA: I understand that the time is up, including the extra time that they were allowed.

MR. JIJÓN: Respondent does not want to hear this, so we will be brief, and I am summing up.

As I was saying, the Court should and could have declared this moot. It did not do so. Instead, what did it do? It used this action as a vehicle to expel, "expel," from the entirety of the Honduran legal system the ZEDE Legal Framework. And that is, even though retroactive unconstitutional, unconstitutionality is virtually unprecedented in Honduras.

And what happened? The Court initially only issued a press release on this. And on the basis of that press release, what did the Government do? It started accusing its political opponents of treason. This was a gift to the current administration.

The bottom line, Members of the Tribunal, is that the entire ZEDE Legal Framework has been ruled unconstitutional retroactively. The Court has said and stated in black and white that none of the existing ZEDEs had acquired any rights. In this context how could Claimants reasonably expect that any court in Honduras is ever going to be giving them a fair shake.

The courts are hopelessly prejudiced against the ZEDEs at this point. Whoever doesn't tow the party line is going to be accused of treason, and this all the more so, in the Supreme Court, has gone out of its way to create a legal fiction that the ZEDEs didn't even exist.

Now, this morning, Mr. Gil stated that we cannot be surprised when we hear that the regime was declared unconstitutional. Now, indeed, given the

animus that now exists in Honduras, this is exactly why local remedies would be futile, and we can take Mr. Gil at his word.

Members of the Tribunal, asking Claimants to go to local courts would serve no purpose. Respondent does not want Claimants to go to local courts because it does not want to give us a fair shake. It just wants procedural incidents, more delay, and to avoid accountability.

To conclude, there is no requirement, none whatsoever, that we had to exhaust, the Claimants had to exhaust local remedies. We shouldn't be here today having this debate. Respondent's objection is frivolous. It should be dismissed by the Tribunal, and the Tribunal should order Respondent to pay costs as it is expressly empowered to do by the CAFTA-DR's Article 10.20.6 as well as by ICSID Arbitration Rule 52.

Thank you, ladies and gentlemen. Thank you, members of the Tribunal. We will answer any questions that the Tribunal will have.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you.

Thank you, Dr. Jijón. But that -- yes, there will be -- I'm sure there will be some questions, but they will be after a break. And it is now, in Spain, 17:56. Let's come back at 18:30 in Spain, so it is 30 minutes past the hour in all the other time zones. Thank you very much.

MS. SANTENS: Thank you.

(Whereupon, at 11:56 a.m., the Hearing was adjourned until 12:30 p.m., the same day.)

AFTERNOON SESSION

SECRETARY MONTAÑÉS-RUMAYOR: I believe we are ready, Mr. President.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank you, Mr. Secretary.

So, with this, the Tribunal has had the opportunity of a short deliberation. We have identified three questions which I think I will put to the Parties, and then my colleagues have some additional questions.

QUESTIONS FROM THE TRIBUNAL

PRESIDENT FERNÁNDEZ-ARMESTO: So I will start -- and I think the first question -- this is why

I start in English -- goes to Claimants.

The system is now asking me if I speak Spanish. The problem is I switched from Spanish to English, and it may be difficult for the Interpreters, but it's unavoidable. So sorry to the Interpreters if from time to time I switch languages.

So my question to Claimants is the following: What are the impugned Measures? Because we have not had Statement of Claim and we need to have -- if we speak about Exhaustion of Local Remedies, we have to refer them to the impugned Measures. Now, the way the Tribunal understands it, the impugned Measures are "Decreto" 32/2022, Decree 33/2022 --

(Overlapping interpretation and speakers.)

PRESIDENT FERNÁNDEZ-ARMESTO: -- and the Supreme Court --

(Overlapping interpretation and speakers.)

PRESIDENT FERNÁNDEZ-ARMESTO: -- published on the 15th of November 2024.

Could you please confirm whether these are, indeed, the impugned Measures? And whether there are

any additional impugned Measures?

MS. SANTENS: Thank you, Mr. President. Yes, I can confirm that the impugned Measures are-- include the Decree abolishing the Organic ZEDE Law, the Decree and the Supreme Court Decision declaring the ZEDE Legal Framework unconstitutional. Those are not the only Measures, though.

There are also discrete Acts have that have been taken over time as we have detailed in our Requests for Arbitration, and there are more, of course, since then, but those -- but the key point is, of course, that there was a promise of 50-year legal stability, and that promise has been broken by the legal framework having been abolished since President Castro came to power without --

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ-ARMESTO: No. No. No. I don't need -- we need the impugned Measures, because the impugned Measures -- so your question -- your answer to my question is, there is two Decrees: One Decision of the Supreme Court acting as a Constitutional Court, and then you are saying there

are also some Administrative Acts which you -- to which you have identified in your Request for Arbitration, and more of these have occurred.

Did I understand you correctly?

MS. SANTENS: Yes, you did.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Excellent.

Now I turn to the Republic.

So the question here would be as follows: Excluding the impugned Measures or from the impugned Measures administrative Acts, if we concentrate on Decrees 32, 22, and 33, 22, the Decision by the Supreme Court published in La Gazeta on 15 November, what are the internal domestic remedies that should have been undertaken by the Claimants in order to fulfill the requirements of the exhaustion of internal remedies?

MR. GIL: Thank you very much, Mr. President. If anyone else wants to complement my answer, so be it. But we have to state that in the time frame for the Request for Arbitration for the remedies regarding the Decree, under the

Administrative Procedures Law we have Article 28 and following Articles, and also Constitutional Articles.

Now, regarding the Judgment by the Supreme Court, this is something that -- it cannot be contested.

PRESIDENT FERNÁNDEZ-ARMESTO: Now, regarding Decrees 32 and 33, this is what I'm saying.

MR. GIL: The Administrative Procedure Law, which is basically the administrative part of the claim, and regarding those Decrees, we have a claim -- a direct claim before the Constitutional Court or a direct claim.

PRESIDENT FERNÁNDEZ-ARMESTO: Yes. But I have read the Administrative Procedure Law of Honduras which can apply to administrative Acts, and that is the third category of acts which the Claimants brought up.

My question is: The Claimants as Companies that are -- some of them are foreign Companies and others are Honduran Companies -- what action can they interpose against Decrees 32 and 33 under the legal framework of Honduras? Can they do an

unconstitutional -- of the remedy as the Director of the University did?

MR. GIL: Yes. They can go directly before the Supreme Court with a remedy of unconstitutionality. Any citizen, as the university -- Autonomous University of Honduras, can raise this objection. And Decree 32 and 33, if it is considered that they affect the constitutional rights of persons, they can interpose a -- reclaim like that.

PRESIDENT FERNÁNDEZ-ARMESTO: Any comments from Claimants?

MS. SANTENS: You have already made the point that the Supreme Court has already decided the point, Mr. President. We would only add that the three Claimants are U.S. citizens, not Honduran citizens. So, to the extent the point was made that every Honduran citizen has a right to bring a claim that in action was unconstitutional, the Claimants here are not Honduran.

PRESIDENT FERNÁNDEZ-ARMESTO: Does the position of the Republic change if three U.S. companies, the ones involved, if they have to -- do

they have any chance to come before the Supreme Court of Honduras to ask that these two Decrees be declared unconstitutional?

MR. GIL: Well, any inhabitant of the Republic, it doesn't have to be a Honduran citizen, any inhabitant can do so.

PRESIDENT FERNÁNDEZ-ARMESTO: Well, I don't know if they inhabit Honduras. I don't know if these three are -- well, the question would be, basically -- or the question is intended to see what the end or the exhaustion of the actions against an act can be taken. So you have to know what the acts are that are being questioned. So these actions of three U.S. companies, what can these U.S. companies do in the legal system of Honduras if they have to go against two Decrees approved by Parliament?

MR. GIL: The rule is that anyone who feels that their rights are being violated can present a claim. This is a general rule. So the three foreign companies are entitled to do so. And this is the case because even when the procedures began in Honduras, were taken, Mr. Conlindres took part in it.

PRESIDENT FERNÁNDEZ-ARMESTO: Any comments from the Claimant?

MR. JIJÓN: Thank you, Mr. President. Just on that final point on Mr. Colindres's participation, I just stress one more time, as noted in our pleadings, Mr. Colindres's, the Technical Secretary of Próspera ZEDE, is not affiliated with Claimants. He is an authority of the Honduran State duly appointed by -- under the Organic Law of the ZEDEs, and, moreover, when he participated in the Supreme Court proceeding, what my colleague is alluding to, he was not even the Technical Secretary at that point. He was operating as a lawyer to one of the amicus who was submitting a position on that, who is also not affiliated with Claimants.

So, just to be clear, when they continue to insist that the Technical Secretary is participating, as though that has any bearing on Claimants' participation, that is just absolutely false.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. Let's go to another question, and this is a question for both Parties but, first of all, for the Republic.

Let's hear the question first because I think the first question has been answered.

We are not going to discuss at this point the participation of Mr. Colindres. I think it's a very minor issue.

MR. GIL: I just wanted to say that the express standard, Article 67 of the Constitutional Justice Law, establishes who are entitled to promote actions in this case, and it says that any direct international or regional actor can do so.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you.

Let's go to the next question regarding CAFTA, the Treaty. Let's call it the CAFTA Treaty. How is this Treaty approved by the Republic of Honduras? Was it through a decree along the lines of Decree 41-88?

MR. GROB: Yes, Mr. President. We understand it was approved in a similar way. We are checking the file to see whether we have a copy of the Decree. I suspect that is not the case.

PRESIDENT FERNÁNDEZ-ARMESTO: We didn't find it. I didn't find it, at least.

MR. GROB: Okay. Let's see if we are luckier than you.

PRESIDENT FERNÁNDEZ-ARMESTO: But your answer is that it was a decree approving this, along the same lines of the Decree of 1988?

MR. GROB: Subject to verification, Mr. President.

PRESIDENT FERNÁNDEZ-ARMESTO: Do Claimants have any further information on how CAFTA was approved or ratified by the Republic of Honduras?

MS. SANTENS: We do not, Mr. President, as we submit, this is material within Honduras's possession. We do not.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good.

So, now, going back to the Republic of Honduras, the question would be -- let's see if we have understood correctly Honduras's position. If we understood this position correctly, what they maintain is that the Declaration in Decree 88-41 is applicable and prevails over the content of CAFTA. And the consequence of this would be as follows: Since, in CAFTA, Article 10.18.2 requires a waiver -- and now I

have it in English. I will read it in English because I don't have it Spanish: "No questions may be submitted to arbitration under this section."

And then it states: "Unless the Notice of Arbitration is accompanied for Claims submitted to arbitration by the Claimants' written waiver and by other claims by the Claimants and the enterprise's written waivers, and the waivers refer to any right to initiate or continue before any Administrative Tribunal or court under the law of any party or other dispute-settlement procedures, any proceeding with respect with any impugned measure."

I understood from Mr. Grob that, in order to compatibilize the Declaration of Decree 41-88 and this waiver of rights which is required under Article 10.18, that -- we understood that the interpretation provided by the Republic of Honduras is that, under CAFTA, an investor must necessarily apply to an arbitration procedure under UNCITRAL Rules, and they cannot invoke an arbitration under ICSID Rules because, if they do so, they would be breaching the Declaration contained in Article -- or Decree 88-41.

Did I understand correctly, Dr. Grob?

MR. GROB: Thank you, Mr. President.

But let me give you more details, if you allow me. The position of Honduras is that not that the Declaration of Legislative Decree 41-88 prevails over CAFTA. We think that they are both compatible, and this is what we explained in our presentation.

CAFTA-DR under Article 10.17 refers to Chapter 2 of the ICSID Convention which, in turn, goes to Article 26, which is the Article under which the Republic of Honduras made this Declaration contained in Decree 41-88. It is not that one prevails over the other. There is a dialogue among these different sources that must be invoked to have a consent.

Regarding the waiver clause that you were mentioning under Article 10.18, the position of the Republic of Honduras is that we do not have here an incompatibility.

First of all, for what I just said, but due also to the fact that the requirement is to exhaust remedies. And if these remedies have been exhausted, it is feasible to start an ICSID Arbitration. It

doesn't exclude this possibility, but the conditions or the requirement of the Exhaustion of Local Remedies must be fulfilled.

PRESIDENT FERNÁNDEZ-ARMESTO: The Article says "initiate or continue." So what I would like to understand is, if what the investor has done is to begin this procedure but they do not want to carry on with it, they should not go to ICSID Arbitration.

MR. GROB: Yes, that would not comply. One of the conditions established by Honduras in Decree 41-88. That is not to say that there are other available fora for investors to apply to without the need to exhaust remedies before an international arbitration.

PRESIDENT FERNÁNDEZ-ARMESTO: And, for example, in this case, the Claimants could have gone to this Arbitration without incurring in the defense by the Republic. They could have invoked an arbitration under UNCITRAL Rules.

MR. GROB: That is correct. And we said it since the beginning. The position of Honduras is not that the exhaustion requirement is referred only to

the ICSID provisions only. It shouldn't apply to all dispute resolution procedures, but only to this one.

And we tried to explain that there was a historical background that explains or clarifies that condition regarding the use of this dispute resolution matter in particular, the ICSID procedure.

PRESIDENT FERNÁNDEZ-ARMESTO: But let me -- I would like you to explain. Let's look at the administrative acts invoked by the Claimants. We are not going to talk about Decrees 32 and 33 but only to a series individual administrative actions. So I would like for you to explain. Let's imagine that the investors want to invoke ICSID. How can they go to an ICSID Arbitration and at the same time comply with Paragraph 2 of Article 10.18?

MR. GROB: How can they do so?

PRESIDENT FERNÁNDEZ-ARMESTO: Yes. How can they waive their right to begin or carry on with the administrative contentious remedies they have under the legislation of Honduras? How can they waive these requirements, when at the same time Decree 41-88 mandates that they should take the proceedings to the

point of exhaustion within the legal system or judicial system of Honduras? How are these two things compatible? Because you said -- and I don't know how can these two things can be compatible.

Let's say they have been given a tax order. What should they do before invoking a procedure before ICSID? How can they exhaust internal remedies in that case, in particular?

MR. GROB: Well, to answer your question directly, the position is that they should have exhausted these remedies. That is the requirement when it comes to administrative actions.

We have the Administrative Procedures Law. There's a procedure that is brought before the Court that dictated the Resolution. And if the person is not satisfied, there is an appeal procedure to this superior instance. And then there is an illegality remedy; and, further, apart from that, we have the judicial procedures.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. Let's try that -- let's say that they go to the second instance of the Contentious Administrative System, and

they lose in that place, and they want to evoke ICSID.

How can they waive this if they have already exercised it?

MR. GROB: They would have had to fulfill the requirement to exhaust local remedies.

PRESIDENT FERNÁNDEZ-ARMESTO: And now we have to fulfill the requirements of Article 10.18.2. Let's suppose that they had fulfilled this. How can they continue with a judicial claim in that case?

MR. GROB: This is a requirement, Mr. President, that was included in this Treaty to avoid the multiplication of simultaneous remedies because they would have fulfilled that requirement, and they would have to consider that this is fulfilled.

PRESIDENT FERNÁNDEZ-ARMESTO: No, no. What it calls for, the Article, if you read it, is a written declaration by the Claimant waiving any right to initial or continue any remedy before an Administrative Court or before a court of law.

MR. GROB: It doesn't apply. It would have exercised the rights it might have, and, therefore,

all that it remains is to effectuate the waiver. The rule doesn't grant rights. It is in favor of the State. It's been established in favor of the State in order to avoid concurrent duplication of procedures, and therefore, if there's not a right because it has already been exercised, then I don't see how the State could argue failure to meet that requirement.

PRESIDENT FERNÁNDEZ-ARMESTO: Very well. I'm sorry to the Interpreters.

Can I now give the floor to Claimants? Do they have any comment to make on this line of questions?

MS. SANTENS: Maybe just a few, Mr. President. So you started your question by asking whether the position of Respondent is -- if there's incompatibility with ICSID Arbitration. There was still an option to go to UNCITRAL Arbitration, and that is, in Respondent's submission, sufficient.

I do want to make the point that that is not correct for the LSA. The LSA is an investment contract, and so there is no UNCITRAL option. So the argument doesn't work, because it doesn't work for the

LSA, which is an Investment Agreement under CAFTA-DR.

I would also say that the argument generally doesn't work, as you noted ICSID Arbitration is an important right for investors, and it is just not sufficient to say if there's an incompatibility with ICSID Arbitration that, well, the investors have UNCITRAL arbitration. That is just not a valid response to our argument.

I would also say, of course, we have pointed out there were many other incompatibilities, including the three-year prescription period, and I think Mr. Grob's response to your question again pointed out that that would be an important practical hurdle to what Respondent has suggested must be done.

I would also point out that Mr. Grob said -- and I think I heard him say it in Spanish, (in Spanish), there would be nothing to waive, and that is exactly our point. That the waiver provision is made without effet utile and the Respondent's interpretation.

And, finally I would say -- and this is a point that I had to skip in my argument due to lack of

time, but there is a slide in our deck that specifically shows that Honduran law itself provides that if there is an incompatibility between Honduran law and its treaties, then its treaties will prevail. And so we suggest that that would be the case here also in the event of any incompatibility between the Declaration and CAFTA-DR.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good.

Then I now turn to my esteemed colleagues. They may have some additional questions.

Prof. Vinuesa, any questions?

ARBITRATOR VINUESA: I'm going into Spanish.

I had some questions, but now they are no longer necessary in light of the exchanges of views that we just heard. Now, what I do understand clearly are the positions of the Parties, with which I will refrain from asking any questions that might confuse you about how clear I am regarding the positions of the Parties. Thank you.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you. Thank you, Prof. Vinuesa.

ARBITRATOR RIVKIN: Similarly, I can add

that the questions I had have now been answered through the President's questions, so I have no additional questions to add. Thank you very much.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. So I'll go on in English.

With this, I think that we are coming to the end of the Hearing. I will give now the opportunity to both Parties, first to the Republic and then to Claimants, to make a last -- if they feel they have anything which remained unsaid, it is now the opportunity to say it.

So, with that, I give the floor to the Republic of Honduras.

MR. FIGUEROA: Yes, in keeping with the Procedural Order, I think after the questions there was going to be a 10-minute break in order to organize ourselves for final comments.

PRESIDENT FERNÁNDEZ-ARMESTO: Excellent. That is no problem whatsoever.

Well, it is 6 past the hour, and we'll come back in 20 past the hour, wherever you may be. It is 6 past the hour, we'll be back at 20 past the hour.

(Brief recess.)

SECRETARY MONTAÑÉS-RUMAYOR: I think we are ready, Mr. President.

PRESIDENT FERNÁNDEZ-ARMESTO: Very well. Thank you very much.

I am not seeing the Republic, Mr. Secretary. Here they are. No. There we are.

Very good. We resume the Hearing with two messages from the Tribunal.

The first is -- and, now, I'm sorry for the Interpreters, I will switch to Spanish. We would like to ask the Republic of Honduras to please look in the record, and if it's not in the record -- and we think it's not -- that you introduce into the record the Decree by which the Republic approved or ratified the CAFTA. I remember that Mr. Grob said that he recalled that there was a decree, and we'd also like that to be in the record, just as the Decree by which the ICSID Convention was adopted is in the record.

And the second, I will switch to English for both Parties. Sorry to the Interpreters. That you should limit your final presentations to between 5 and

10 minutes. We have heard a lot. I think most points are very well discussed, so if you just can put some focus on any issue which is still -- which where you still think that the Tribunal could be educated.

Very well. With this, I give the floor to the Republic of Honduras for its Final Conclusions.

REBUTTAL ARGUMENT BY COUNSEL FOR RESPONDENT

MR. GIL: Thank you very much, Mr. President.

We are going to put up a PowerPoint. We'll take very little time. We don't want to get into minor details.

MS. SANTENS: Any PowerPoint presentation should have been sent to us 30 minutes in advance.

MR. FIGUEROA: No, this was for the Rebuttal, so I think it would be impossible to comply with that rule.

Excuse me, I'm going to say it in Spanish. This is for the Reply, and what is established in the procedural rule, well, it would be impossible to follow that rule at this stage. And I apologize to the Tribunal for the clarification.

MR. GIL: Just a second, please. Actually, it's not a PowerPoint. It's 12 slides. This first one is a photo from the PowerPoint that was presented by the Claimant, which obviously -- and, second, it's just a couple of slides to better respond to the issues that are at play raised by the Tribunal.

And there was -- we decided to make a -- they made a comparison between Próspera and other Special Economic Zones, and there they dared to compare Próspera ZEDE with no less than Astana, the capital of Kazakhstan; Abu Dhabi, Dubai, and Hong Kong. So as to not take too much time on this, I'd simply like to note that neither Astana nor Abu Dhabi nor Dubai nor Hong Kong evidently are controlled by any private owner. Absolutely each and every one of these cities are under governmental control of a sovereign country.

So Astana has a governor who is designated by the President of the Republic, the city is fully integrated into the administrative structure of the country. Abu Dhabi and Dubai are both part of the United Arab Emirates and basically within a federal

structure with all the powers that might so correspond. And Hong Kong, it's an autonomous city and it's evidently totally under the sovereignty of China. Plus, it is a special region of the People's Republic of China.

Very well, if we could go to the next one, President.

You asked us a question. I answered, but I just want to say a little bit more. With respect to Decrees 32 and 33, 33 never came into force so the only Measure really at issue is really 32. And your question I noted on Article 77 of the Administrative Procedure Law, which is totally applicable but it's not in the record. What is in the record is the Constitution which, at Article 185, answers the question, Mr. President. It says that a Declaration of unconstitutionality of a statute and its repeal must be applied for by one who considers themselves harmed in their direct personal and legitimate interest without more requirements in the way of, say, nationality or belonging to the territory. So this is an appropriate remedy.

And this is the most important thing, Mr. President, with respect to what I said. I'll just take one more minute before I give the floor to the other lawyers. In my comments this morning, I placed quite a bit of emphasis on what Measures were the basis of the Request for Arbitration for almost $11 billion for the purpose of threatening the Republic of Honduras, which we heard they say very keenly today.

The Tribunal understands our position, and it should only -- it should be applied only to things that were happening as of the presentation of the Request for Arbitration. The Supreme Court Judgment came afterwards, and so it cannot, by any circumstance, be considered one of the Measures challenged or impugned by the Claimants considering that it came quite a bit later.

So excuse me for saying so, but this is a very explicit rule in the DR-CAFTA, Mr. President. Why? Well, I'd ask you to look at Article 10.16 of DR-CAFTA which is called "submitting a claim to arbitration." Article 1 says, in the event that a

disputing Party considers that it cannot settle a dispute with respect to an investment through consultation and negotiation, (a) says the Claimant on its own account may submit a claim to arbitration -- and I emphasize -- submit a claim to arbitration in keeping with the section in which the following are alleged:

First, that the Respondent has violated -- not that will violate or potentially will violate, but this is Spanish-language grammar, and it's the -- perfect sense. And second, which is important for damages, is, first, that there be an obligation in keeping with Section (a), and then, second, that there be an authorization -- or, rather, two, that the Claimant has suffered losses.

Now, four under 10.16, defines what submitting a claim to arbitration means, and it says: "A claim shall be considered submitted to arbitration pursuant to this section, which is applicable and relevant, when the Notice or Request for Arbitration (Notice of Arbitration of the Claimant)."

That is the timeframe, and it's expressly established in this Treaty. This is strict application of 10.16(1)(a), and 10.16(4). The jurisdiction of this Tribunal should be to circumscribe to the moment when the Request for Arbitration was presented which is when the events with respect to the Supreme Court had not come to pass. That is what I had to say, and, with that, I give the floor to the attorney Francisco Grob.

MR. GROB: Thank you very much, Mr. President. Members of the Tribunal, as indicated, the position of the Republic of Honduras in connection with the DR-CAFTA and the requirement to exhaust domestic remedies is that there is harmony and these are provisions that are completely compatible, in particular, in connection with the denunciation clause, and I was explaining that both can be understood as fulfilled at the same time, therefore, there would be no inconsistency. But, even if there was a conclusion that there is some sort of incompatibility, it would not be foreign or strange, meaning that there are other provisions in the

DR-CAFTA that cannot be applied within the -- in the context of an ICSID Arbitration.

For example, the definition of "nationals." "Nationals," under DR-CAFTA, implies an application of the dominant and effective nationality. And it is undisputed that, under ICSID, a national is a party that has the nationality of the host country. Even though the Convention may refer to dominant and effective nationality, this is not one of the jurisdictional ratione personae requirements to initiate an ICSID Arbitration.

Something similar also applies to the requirements that are traditionally applied to the concept of investment. So a treaty may define an investment, but if the investment does not agree with the definition of "investment" under Article 45 of the Agreement, may imply resolution before ICSID, and that does not imply that the Treaty will no longer be in force or that these provisions become useless. Rather, that there is a need to follow the requirements of both Treaties, and if that is not possible, then only for that -- the Treaties and even

all of them that were cited by the Claimants beyond DR-CAFTA established the fora.

MR. FIGUEROA: I thank you.

Mr. President, I will conclude with three brief points. The first one has to do with the LSA. In particular, the observation by Claimant that the LSA does not allow for an UNCITRAL Arbitration, for example. That is the point of view of Honduras. We have already described this from the facts that this is a self-contract between the Próspera and the Secretary-General of Próspera. If the Secretary-General of Próspera can never be a Honduran official, and this is very clear under the legislation in Honduras, therefore, a contract that may be signed for 30, 40, 50 years of stability has no validity. The validity of that contract is something that can be perfectly decided by this Tribunal.

As we have mentioned, this is an objection under 10.20.5, and according to 10.20.5, there is no application of certain fact arguments or any allegations by the Claimant. The Claimant has attempted to impose the standards under 10.20.4. And

even if that was feasible, which it's not, and my colleagues have explained why this is not possible, but even if we could impose 10.20.4, the validity, the legal consequence of the facts is not something that can be accepted.

The only principle that is accepted under 10.20.4 has to do with fact argument. Nobody is alleging who signed the Contract, when it was signed, and no one is disputing the content. Those are facts, and that is what is accepted under 10.20.4. The legal consequence of those facts and whether that makes it valid or not, that is not accepted, that is legitimately under the Decision by the Tribunal. And since it is not valid, it cannot be the foundation of a civil dispute or of any sort.

So, as indicated, the legal window to be analyzed by this Tribunal has to do with the date of the presentation or the submission of the Request for Arbitration, and the various remedies that could -- that the Claimant could have resorted to on that date.

On that date, there were some feasible

remedies that were not used by Claimant, even though they should, and as my colleagues indicated, it seems that they knew of Decree 41-88. So that is the reading that we should have.

With this, I covered the LSA. As to the admissibility, this is not something that we addressed directly in our Opening, but in the Claimants' Opening they underscored the fact that the Exhaustion of Domestic Remedies was always considered an issue about admissibility as to diplomatic protection, then the same standard had to be applied. That analysis makes no sense, with due respect.

Why? Because, under the ICSID Convention, we have an exclusion of the diplomatic protection. So if you resort to ICSID, there can be no diplomatic protection. So the standard for Exhaustion of Domestic Remedies under that remedy no longer applied. There is a mischaracterization by Claimant in this presentation, but, in our Pleadings, we had said that Article 26 allowed the State, again, to allow for the exhaustion of their domestic remedies. We are not saying that we need to apply the standards of

diplomatic protection. We were just explaining the historical meaning behind the adoption of ICSID by Latin America countries. This was a proposal by ICSID, but, within the ICSID framework, the National Courts within a country, they could exhaust remedies before initiating arbitration. That is key.

And also, again, what is critical here is that admissibility is not -- or the exhaustion of remedies does not have an admissibility or jurisdictional nature, per se. It has to be analyzed within its context and also based on the good-faith application of the Treaty.

We are faced with a treaty that brings the exhaustion of domestic remedies as an issue of consent to ICSID. We have a jurisdictional issue, and that is key.

And to conclude, I would like to refer to what the Tribunal said, that ICSID is a right that the investor has, whether UNCITRAL is available or not.

First of all, again, this is a very important significant mischaracterization. Access to ICSID is not a right. The Treaties give the right to

investors to be able to present a dispute by means of international arbitration. It is allowed, and that's the reason why the investor may choose the venue, but ICSID does have jurisdictional limitations, as Dr. Grob mentioned.

As to the Party, whether the Party is a double national, it doesn't matter. You won't be able to resort to ICSID. That's the reason why national investors resort to CNUDMI, but in this case -- or UNCITRAL, rather. But Claimant knew that Honduras has this Declaration, had this requirement. In spite of this, they initiated this Arbitration before the wrong forum because they did not comply with the requirements for the Centre.

So at that time, they could have resorted to a different forum or presented a claim, and also received a Decision from a tribunal and also received justice in the right forum. So this is -- the issue is not whether ICSID was better or not, but Claimant always had access to the international fora to present their case.

And, with this, we conclude the presentation

by the Republic, and we thank you.

PRESIDENT FERNÁNDEZ-ARMESTO: I thank you.

And with this, we now give the floor to Claimants for their final presentation.

REBUTTAL ARGUMENT BY COUNSEL FOR CLAIMANTS

MR. JIJÓN: Thank you, Mr. President.

Let me catch my breath because that was a lot.

We're not going address all that we just heard. Suffice to say, we don't agree with it. We think that, once again, as with what we have seen throughout this preliminary phase, Respondent is focusing on irrelevancies and avoiding the real issue at hand. Just very briefly, these allegations are nothing but politics, hyperbole. They're misrepresentations.

Just to clarify the record, Respondent showed you a table that was prepared by the ZEDE Technical Secretary comparing the legal regime applicable to the ZEDEs to other regimes around the world. Obviously, this is comparing the legal framework as is, you know, apparent from the table

itself, and, in fact, the ZEDE Legal Framework is not materially different from the frameworks in other parts of the world, including in Hong Kong, the DFIC, and also special economic zones of other types in other parts of the world, port authorities, for instance, free-trade zones, these things are not uncommon.

What Respondent is doing is it's grossly mischaracterizing the nature of the ZEDE. Let's be perfectly clear: The ZEDE is not some assault on Honduran sovereignty. The ZEDE is not Claimants. The ZEDE is a Honduran governmental subdivision, distinct from Claimants. And Claimants acquired rights in the ZEDE, but they are not the ZEDE themselves.

And it's important to underscore yet again that, when Claimants invested, that framework had repeatedly been upheld as constitutional and is obviously fully consistent with Honduran law and sovereignty because it is a part of Honduran law. How could it be otherwise, when the ZEDEs were created and grounded in Honduras's own Constitution, its own laws, its own Treaty? All of this can be addressed in the

merits phase. It is not appropriate for the current discussion.

Similarly, we once again heard misrepresentations about the Technical Secretary of the ZEDE. Just for the avoidance of doubt, the Technical Secretary of the ZEDE is not the "General Secretary of the ZEDE." The Technical Secretary is an official of Honduras appointed in accordance with Honduras's own law.

And similarly, the Legal Stability Agreement was entered into in accordance with Honduras's own law. This was not an objection that is now a part of the Preliminary Objection. There is no reason for this to be considered. It is completely irrelevant to the issue of exhaustion before the Tribunal.

Incredibly, we heard yet another new objection right now, an objection that appears to be that -- going to what claims can or cannot be brought at this phase.

I'm not even sure exactly what Respondent was arguing because it is entirely impermissible and unacceptable to have this sort of an objection in the

last few minutes of a hearing. This has never been briefed. It's not -- it's absurd that this is how they would raise it. If they want to raise this type of objection, it should be done in good order as an Objection to Jurisdiction, not simply as an implication asking the Tribunal to disregard good order and procedure.

Finally, I think that we need to say, just in any case, this type of objection is particularly absurd when it comes to the Supreme Court. If they are talking about the timeliness of the Supreme Court's Decision, it is particularly relevant and will be particularly relevant to the merits of the discussion simply because the Supreme Court itself made a Decision that was retroactive. And all of this can be briefed at the appropriate time. We submit to you, Members of the Tribunal, that the rule of law is far less safe in Honduras as a whole than it ever was in Próspera ZEDE. Claimants were justified in bringing the current case and their cause of action because Honduras is undermining legal stability which is what will be at issue in the case. But it is

not -- and I repeat, it is not what is at issue in this Preliminary Objection.

With that, I will hand the floor to my colleague.

MS. SANTENS: Thank you.

So I will say in closing, Members of the Tribunal, that nothing that you have heard from Respondent today changes the clear answer to the one question that is in front of you today. For all the reasons we have detailed, Respondent did not require Claimants to exhaust local remedies before bringing ICSID Arbitration in this case.

And Respondent has been unable to muster any sound Legal Arguments to defend this objection which, we submit, is frivolous. It didn't do so in the papers, and it didn't do so today. Instead, like in the papers, today it used about half of its time on irrelevant matters right now. They will become very relevant later, but they are irrelevant now. And so our submission is that the Preliminary Objection is frivolous. It's just another delay tactic aimed at obstructing these proceedings, and we accordingly

respectfully request that you rule that there was no exhaustion requirements and that Respondent's Preliminary Objection must be denied both as a matter of procedure and on the substance.

We also request that you award Claimants all of their costs incurred to defend this frivolous objection. And I wanted to point out to you CAFTA-DR Article 10.20.6, which provides -- and I'm reading: "When it decides a Respondent's objection under Paragraph 5" -- so the paragraph under which this objection was brought -- "the Tribunal may, if warranted, award to the prevailing disputing Party reasonable costs and attorneys' fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the Tribunal shall consider whether either the Claimant's Claim or the Respondent's objection was frivolous, and shall provide the disputing Party a reasonable opportunity to comment."

So, as you can see, the CAFTA-DR Treaty partners specifically contemplated the scenario of a frivolous objection and expressly sought to prevent

that scenario by attaching a cost consequence to it. And we submit to you that is because raising a Preliminary Objection like this has very serious implications. It creates a very significant delay in the proceedings, and it very significantly increases the Costs from Claimants pursuing claims.

But, despite this cost provision in Article 10.20.6, Respondent has brought this objection. We do submit that it is frivolous, and we request that you exercise the express power granted to you under Article 10.20.6 to award Claimants all of their costs and attorneys' fees incurred.

I do want to point out that just because the Claim is for a very significant amount doesn't mean that Claimants have very significant resources to pursue the Claim at this time. To the contrary, as you well know, our entire Claim is that Respondent has been obstructing and aborting Claimants' investments in breach of its prior promises of legal stability.

Now, as you will also remember, this arbitration was first brought in December 2022, two years ago. And the only reason that we are today

discussing a Preliminary Objection on the Declaration is Respondent's behavior in this case.

They have delayed the Tribunal constitution literally for more than a year, and once the Tribunal was finally constituted and the objection to Mr. Rivkin was finally decided, the very next thing they did was bring this objection.

And we submit to you they are probably already thinking of the next objection if this one is denied as it should be.

And so, we ask that you now give a sign to Respondent that there are consequences to this type of behavior by ordering Costs, as we ask you do, under Article 10.20.6 of the CAFTA-DR.

I would also submit that, as we saw today, Respondent is going to continue to ignore any guidance given by the Tribunal. The guidance today was to focus on the Preliminary Objection. That was not adhered to. The guidance was in Closing Arguments to be brief and limit the Closing Argument to 5, 10 minutes, that wasn't adhered to.

We suggest that we are just going to see

more of the same obstruction and delay and Claimants would very much like to exercise their right to have this Tribunal hear their claim on the merits in a prompt fashion.

And so, for that reason, we submit again that you should exercise now the power expressly provided to you in 10.20.6, you also, of course, as you know, have the power under ICSID Arbitration Rule 25(3) which allows you to grant Costs on an interim basis.

And so, we ask that at the end of the preliminary phase on the Preliminary Objection, which won't be until at least February, you permit Claimants to submit their Costs, and you ask both Parties to -- you provide both Parties with a reasonable opportunity to comment as provided by Article 10.20.6 of CAFTA-DR.

That is what we ask, Members of the Tribunal. We thank you very much for your attention, for your service in this case, and that closes our submissions to you today.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you.

Thank you very much.

And that indeed closes the submissions for today.

And I have now to speak about the further developments.

POST-HEARING MATTERS

PRESIDENT FERNÁNDEZ-ARMESTO: And I think I promised I would close in Spanish. So, with Claimants' permission, I will now go to Spanish.

We have a good number of procedural steps to fulfill before we can issue the Decision on this objection. First, there is an Application -- or there could be requests by amicus curiae up to January 10. That is an obligation we have under CAFTA.

Next, the Parties may introduce observations to the amicus curiae's request up to January 17. We need to decide by January 24. And the Pleadings by the Non-Disputing Parties -- that is to say, the other States that are Parties to CAFTA, as well as the amicus curiae should be presented by February 7.

You would recall that the States have reserved the right to introduce allegations. And if

they are still with us let me remind you that the deadline is February 7. So due date for submissions by Non-Disputing Parties is Friday the 7th February 2025.

There is still an opportunity for the Parties to this Arbitration, Claimants and Respondent, to present Observations to the amicus curiae presentations as well as the presentations by the other States up to February 14. After this, we need to have a step in this proceeding for Costs because both Parties have requested Costs. So we move from Friday to Friday. This is similar to the Oca game.

So Friday to Friday, because -- and I play because I have to. So we start on January 10, and we are now Friday February 14, but it will be -- it will have to be presented on the 21st of February. So now we are running out of dates.

We had a request for comments from Claimants because February 21 would be the presentation by both Parties, and I would say that with the -- including Observations on Costs, because February 26 would be five days after, and that is the deadline based on

CAFTA for the Tribunal to make a Decision. We have the possibility to extend the deadline by 30 days. We could do so but we are now very close to the deadlines under the Treaty.

At Article 10.20.5, we read that since there has been a Hearing, we can take an extra 30 days and, if there was an extraordinary reason, we could postpone the decision by an additional period which shall not exceed 30 days.

So my question to the Parties is the following: It is impossible to have the Costs submission before the last deadline for participation of the Parties. That is February 14. It is not possible, feasible to have it before the next week, that is February 21. I would say that in this pleading on Costs, the Parties may also include any comment they wish on the Costs and the amount.

Very briefly, one or two pages as to comment, for comments as to the brief on the determination of Costs, but I do not see where we can fit Claimants' request to have its second Brief. I see it under CAFTA at Paragraph 6, where it

says: "Shall provide the Parties an opportunity, reasonable opportunity to comment."

My concern is that we are not doing very well with the dates. I don't know what the Claimant envisions since this is a topic that was presented by Claimant. I think I should give the floor to Claimant.

MS. SANTENS: So, Mr. President, thank you.

In line with my comments just now, of course, the Claimants would like the Tribunal to rule as soon as possible. The ruling on Costs could potentially follow the ruling on the merits. That is one practical way to deal with it. I see you're not in favor with that.

We -- again -- we ask for a reasonable opportunity to comment because that's what CAFTA-DR says and I think, like you, we want to make sure that you follow what is provided for in CAFTA-DR so that there can be no attempt later on to argue that somehow there was no full compliance with CAFTA-DR. Claimants want to avoid that.

PRESIDENT FERNÁNDEZ-ARMESTO: But then I see

your point. It is your right. But since the deadline for the Tribunal is on the 26th of February, either both Parties agree that there are extraordinary Costs and we postpone the 26 February deadline. That's one alternative. And the other alternative is that you will have to make your submission on Costs, not on the 21st of February but say, on the 18th of February, and your comments on the 21st of February.

MS. SANTENS: Well, I would also note -- I mean, it says a reasonable opportunity to comment. It doesn't say a reasonable opportunity to comments on the other side's submission.

PRESIDENT FERNÁNDEZ-ARMESTO: Yeah. That was my position.

MS. SANTENS: Okay. Well, we're happy to follow you in that position, but we would like to have confirmation on the record from the Republic that it agrees as well, please, explicit. If so, we are happy to have submissions on the 21st with the comments in that submission.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. Thank you.

Thank you. Now I give the floor to the Republic.

What should we do with the pleading on the Costs?

MR. FIGUEROA: And I understand that it will be a single writing with comments, 1 or 2 pages, and this would be before the deadline of February 21. We agree with that.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. So I have to instruct you on how to prepare the pleading on Costs. It should have an affidavit, a certified Declaration by the Chief of the Counsel office with a table detailing the Costs incurred by category, lawyers -- I don't know what other categories you could include here.

We don't have Experts, witnesses are not available, so it would be lower Costs, basically, and other Costs by ICSID. So there would have to be a breakdown of Costs confirmed personally by the Head of the Party, and then two or three pages of notes at the most. Two or three pages of comments on the Costs.

Do you agree with that procedure? I would

like to ask the Republic, since I am speaking in Spanish, and then I will go to the Claimant.

MR. FIGUEROA: We agree, Mr. President.

PRESIDENT FERNÁNDEZ-ARMESTO: Is that agreeable to the Claimants?

MS. SANTENS: Yes, it is.

So no annexes and our confirmation of the fees will be taken at face value by the Tribunal?

PRESIDENT FERNÁNDEZ-ARMESTO: You will have -- if you attest to them, that's fine.

MS. SANTENS: I will attest to them, yes.

PRESIDENT FERNÁNDEZ-ARMESTO: Very good. And that is on the 21st of February. And we will do our best to have our Decision by the 26th. I cannot promise that. I mean, because the Tribunal will be ready. I mean, we have a lot of work already done, but, you know, issuing a Decision or Award that has to go through ICSID and it is four days. We will try to do it, but I'm not sure that we will be able to do it. Maybe we will have to invoke for as short a period as possible the extraordinary causes.

We try our best. We try our best, but I

just draw the Parties' attention that we will only -- we can only do our best and that we only have five days to get the Decision out to you between the last submission and the Decision. And although we will have done a lot of work before that, as you can imagine, we do not know whether there will be Non-Disputing Parties' submissions that will be amicus curiae submissions, we do not know how significant those will be. And don't forget that your observations on those will be on the 14th of February.

But we will try our best and assuming that the Non-Disputing Parties and the amicus curiae submissions are not case relevant, we will try to have everything ready on the 26th.

MS. SANTENS: We have every sympathy for the Tribunal Members, Mr. President. The only thing is that I would like to reiterate what I said before. We do want to make sure that the ruling is bulletproof, not subject to any possible attempt to annul it based on process. So we do ask that if you are going to go over time, that you ask Respondent now to agree on the record that it will agree to the 30-day extension, if

need be, and that it will not seek to use the process in any way as a basis to try to annul the Award.

I have to ask this.

PRESIDENT FERNÁNDEZ-ARMESTO: Yes. Thank you, but I think -- I will ask the Republic, but please, it is the Tribunal. We do not need the consent.

It is -- however, if a disputing party requests a hearing, the Tribunal may take an additional 30 days to issue the Decision or Award. Full stop.

Regardless of whether a Hearing is requested, a Tribunal may, on a showing of extraordinary cause delay, issue the Decision requested, the Decision or Award, by an additional brief period which may not exceed 30 days. It is in the powers of the Tribunal, but I will ask, of course, the Republic to confirm that. But I do not think that consent by any of the Parties is required.

Please bear also in mind, we are all, as we say in Spanish, in the hands of God. We may be ill. There may be force majeure, so --

MS. SANTENS: Understood, Mr. President.

(Overlapping speakers.)

PRESIDENT FERNÁNDEZ-ARMESTO: It is impossible for Tribunals to give an unbreakable -- an unmovable deadline.

But I'd like to ask the Republic of Honduras the following: We will try to have the Decision on February 26 without going into that extraordinary period, but due to the limitation in time that we have, it could be possible that we would have to use this extra period. I understand, and I would like confirmation by Honduras, that they understand that this is a right of the Tribunal in extraordinary circumstances in this case due to the complexity of the amicus curiae presentations and the remarks by other States involved, so the Tribunal is able to extend the deadline 30 days.

MR. FIGUEROA: Yes, Mr. President. I would like to comment first on the very offensive and unfortunate comments by the other Party, and the implications that the Party has been acting in bad faith or is trying to annul without reason the award.

The Republic has always acted in good faith, and I would like that to be on the record.

Now, that being said, Mr. President, we believe that this is the right of the Tribunal. In fact, the Republic is willing to agree that there could be extraordinary circumstances and we would be amenable to a 30-day extension.

PRESIDENT FERNÁNDEZ-ARMESTO: Thank you very much. Thanks for that answer by the Republic of Honduras.

So the Secretary is now asking me -- and I think this -- Dr. Montañés-Rumayor, I don't think there has been protected information, Confidential Information in this case, so the addition of the video does not require the participation of the Parties, I understand.

Is that the case, Dr. Montañés-Rumayor?

SECRETARY MONTAÑÉS-RUMAYOR: Thank you, Mr. President. Yes, that is the case. That's how I understand it as well. So we would have seven days for transcription, but for the videos, we would have to clarify whether they can be placed on our website

or not.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. Let's ask the Claimant first if there is any objection to have ICSID place the video on the website of ICSID. We are now desecrating the Spanish language because we are all tired, but if you could place in the ICSID network the video, that would be fine. Is there any objection by the Parties, by the Claimants?

MS. SANTENS: No objection.

PRESIDENT FERNÁNDEZ-ARMESTO: And by Honduras?

MR. FIGUEROA: Honduras requires some time to analyze this issue. If we could have an answer later on, maybe tomorrow on this issue, we would have an answer.

PRESIDENT FERNÁNDEZ-ARMESTO: I don't really know what the position of the Secretariat is.

SECRETARY MONTAÑÉS-RUMAYOR: Thank you, Mr. President.

I understand this was agreed by the Parties and the Tribunal had a Procedural Order Number 2, Paragraph 32 discusses this Point 2 of that Paragraph.

So it is just to clarify whether there is any protected information under CAFTA. And if there are no details in that regard, we would publish it in a deadline of seven days, which I understand has been shortened. But that was discussed in Paragraph 32.

PRESIDENT FERNÁNDEZ-ARMESTO: What I understand, is that according to CAFTA, ICSID must publicize the video because, in principle, these Hearings are public, and as the Parties are aware of, there are several organizations that are insisting in being able to follow this case.

So I think the question is not -- maybe I didn't ask the question correctly. I -- what I wanted to say is that CIADI, since there were no information that was confidential, the position of ICSID is to place the video on the website, not in seven days but one day with a deadline of one day, to take note of the positions of third parties who want to take part in this proceeding.

SECRETARY MONTAÑÉS-RUMAYOR: Yes, Mr. President. Thanks for the clarification.

MR. FIGUEROA: Apologies, Mr. President.

But with this clarifications we do agree.

PRESIDENT FERNÁNDEZ-ARMESTO: Very well then.

So the video will be placed on the website briefly, in a brief period, and there will be a transcript in Spanish and another Transcript in English, and we understand that these transcripts can be corrected up to Monday the 23rd of December; is that right?

SECRETARY MONTAÑÉS-RUMAYOR: Yes, according to Paragraph 32 of the second Procedural Order this is the case.

PRESIDENT FERNÁNDEZ-ARMESTO: Okay. Well, we have two excellent Court Reporters, and the quality of the Transcript is quite high, and I would ask the Parties not to modify or not to introduce changes in the interpretation. Each language is independent. So what we cannot do now is to correct the interpretation provided by the Interpreters. The Court Reporters only ratify what the Interpreters have been saying. If the Interpreters made mistakes, this cannot be modified in Transcript. In the Pleadings, we can

point out that the interpretation was not correct or that the original language was one or the other.

And, secondly, I would ask the Parties only to change aspects that are very relevant in the language in which they were expressed. Small details, small mistakes, should not be modified. I think it is not pertinent to do so.

So with these warnings and conclusions, we would have until Monday the 23rd of December to correct these transcripts. And the Court Reporters asked me to -- because the 23rd is a very difficult date for all of us. So they asked me to provide an earlier date, some additional hours to provide the Transcript, and with the limitation that the number of changes.

And also, Mr. Montañés-Rumayor, I understand that these transcripts will also be published.

SECRETARY MONTAÑÉS-RUMAYOR: That is the case, Mr. President. Yes.

PRESIDENT FERNÁNDEZ-ARMESTO: They will be published because this is the decision we have made in our Procedural Orders, and it is also ICSID's

practice.

Very well. Now I have to ask Dr. Montañés-Rumayor if I have left something out, if I have forgotten.

SECRETARY MONTAÑÉS-RUMAYOR: Everything very clear, Mr. President. There is nothing to add on behalf of the center.

PRESIDENT FERNÁNDEZ-ARMESTO: And my colleagues of the Tribunal, Mr. Rivkin and Prof. Vinuesa, is there anything to be added?

ARBITRATOR VINUESA: No, nothing on my part, says Mr. Vinuesa.

ARBITRATOR RIVKIN: Nothing. We thank both Parties.

PRESIDENT FERNÁNDEZ-ARMESTO: Definitely. Yes.

And so I would ask the Republic if they have anything to add?

MR. FIGUEROA: No. Just to thank the Tribunal, Mr. Montañés-Rumayor, Interpreters, and the rest of the participants in this hearing. Thank you very much.

PRESIDENT FERNÁNDEZ-ARMESTO: Claimants, anything to add at this stage?

MS. SANTENS: Nothing, also, Mr. President. Also our thanks to everybody who participated in today's hearing in whatever capacity.

PRESIDENT FERNÁNDEZ-ARMESTO: Yes. Let's thank our Court Reporters and our Interpreters. This must have been not an easy day for them. Thank you for their efforts. And, with that, we finalize this Hearing and I thank everyone for having been here and having cooperated in this successful day.

Dr. Montañés, I think what you have to do is send each party to the breakout room as well as the Tribunal.

SECRETARY MONTAÑÉS-RUMAYOR: We will do so, Mr. President.

PRESIDENT FERNÁNDEZ-ARMESTO: And Merry Christmas to each and everyone.

MS. SANTENS: Thank you.

MR. JIJÓN: Thank you.

MR. FIGUEROA: Thank you. Merry Christmas.

(Whereupon, at 2:17 p.m. the Hearing was

concluded.)

POST-HEARING REVISIONS

CERTIFICATE OF REPORTER

I, Dawn K. Larson, RDR-CRR, Court Reporter, do hereby attest that the foregoing English-speaking proceedings, after agreed-upon revisions submitted by the Parties, were revised and re-submitted to the Parties per their instructions.

I further certify that I am neither counsel for, related to, nor employed by any of the Parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

Dawn K. Larson